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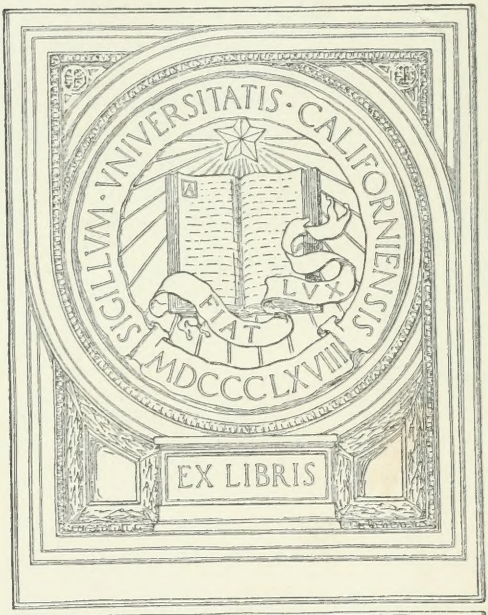

GIFT OF
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Wilmington, Del. Ordinances, &c.

THE CHARTER

OF THE

CITY OF WILMINGTON

Acts of the General Assembly

Relating to the City

AND

Ordinances, Resolutions, Rules and Regulations

of the Departments of the City Government

IN FORCE JANUARY 1st, 1910

ALSO

The Original Borough Charter

(Annotated)

PUBLISHED BY ORDER OF THE COUNCIL

WILMINGTON, DEL.
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PREFACE

This volume as revised and annotated, was prepared by the direction of The Council of Wilmington, pursuant to the provisions of certain resolutions adopted by that body.

The subject matter of the volume has been arranged in seven parts for convenience of reference.

The first part contains the original Borough Charter of the city.

The second part contains the Charter of the city as amended by Acts of the General Assembly, subsequently passed. Matter enclosed in brackets is new matter introduced into the charter since 1883, and only such Acts as are expressly declared to be amendments to the charter, or to prior amendatory Acts, are introduced into the text of the charter.

The third part contains all other Acts of the General Assembly, of a public character, now in force relating to the city.

This part consists of eighteen chapters, beginning with Acts supplementary to the charter, and each chapter has a paged syllabus showing the contents of the chapter.

The fourth part contains the ordinances passed by The Council, and includes all general public ordinances in force on January 1st, 1910. (All ordinances and resolutions establishing or altering the grades of streets, the line or grade of curbs or corners, the width of footways and streets, the laying out, and the fixing and establishing the location, of streets and the extension of footways, sidewalks and streets (except in certain instances of old streets); ordinances granting permission in specific cases to construct railroad tracks and sidings on and across streets, to lay tracks for street railways, and to erect poles for telegraph, telephone, electric light and trolley wires, and all other ordinances relating to private rights have been

City of Wilmington

omitted, pursuant to the direction contained in a resolution of The Council passed for that purpose.) This part consists of nineteen chapters, and each chapter has a paged syllabus showing the contents of the chapter.

The fifth part contains all general rules, regulations and resolutions adopted by the Board of Directors of the Street and Sewer Department since the creation of the board in 1887, and in force on January 1st, 1910, excepting resolutions amending ordinances, which have been incorporated in the ordinance amended. The same class of enactments has been omitted from this part as was omitted from the fourth part.

The sixth part contains all the general rules and regulations adopted by the Board of Water Commissioners from the time of the creation of the board in 1885 to January 1st, 1910.

The seventh part contains all the rules and regulations adopted by the Board of Park Commissioners since the creation of the board in 1885 to January 1st, 1910.

The subject matter of the fifth and sixth parts would not admit of a sub-division into chapters, and the contents of those parts have been indicated by a paged syllabus at the head of each part.

Stars in the line of the text indicate omissions from the statute, ordinance, rule, resolution or regulation of parts repealed or superseded, or matter omitted by the direction of The Council. All amendments are enclosed in brackets.

The annotations include all the decisions contained in the Law and Chancery reports of the State of Delaware relating to the City of Wilmington or any of its departments, and a number of unreported decisions of which the author has personal knowledge.

A table of cases is printed herein.

The annotations are the work of Robert G. Harman, Esq.

WILLIAM H. HEALD,
ROBERT G. HARMAN.

Wilmington, Delaware, March 4, 1911.

TABLE OF CONTENTS.

PART I.

Page

ORIGINAL CHARTER OF THE BOROUGH OF WILMINGTON..... 5

PART II.

CHARTER OF THE CITY OF WILMINGTON..... 17

PART III.

ACTS OF THE GENERAL ASSEMBLY RELATING TO THE CITY OF WILMINGTON.

CHAPTER I.

Acts Supplementary to Charter.....149

CHAPTER II.

Acts Relating to City Officers.....157

CHAPTER III.

Acts Relating to Public Parks.....168

CHAPTER IV.

Page
ACT RELATING TO WATER DEPARTMENT.....174

CHAPTER V.

ACT RELATING TO THE HARBOR OF WILMINGTON.....185

CHAPTER VI.

ACT RELATING TO THE POLICE DEPARTMENT.....205

CHAPTER VII.

ACT IN RELATION TO THE STREET AND SEWER DEPARTMENT.224

CHAPTER VIII.

ACTS IN RELATION TO SEWERS AND DRAINAGE.....238

CHAPTER IX.

ACTS IN RELATION TO STREETS AND ROADS.....249

CHAPTER X.

ACTS IN RELATION TO REGISTRATION OF VOTERS.....272

CHAPTER XI.

ACTS IN RELATION TO ELECTIONS.....239

CHAPTER XII.

Page
Acts in Relation to Public Schools.....419

CHAPTER XIII.

Acts in Relation to the Sinking Fund and City Debt..454

CHAPTER XIV.

Acts in Relation to Exemptions from Taxation.....485

CHAPTER XV.

Acts in Relation to City Railways.....493

CHAPTER XVI.

Acts in Relation to Bridges.....510

CHAPTER XVII.

Acts in Relation to Sales of Real Estate.....513

CHAPTER XVIII.

Miscellaneous Acts 518

PART IV.

ORDINANCES OF THE CITY OF WILMINGTON.

CHAPTER I.

Page
ORDINANCES RELATING TO CITY OFFICERS.....565

CHAPTER II.

ORDINANCES RELATING TO THE STANDING COMMITTEES OF COUNCIL 610

CHAPTER III.

ORDINANCES RELATING TO THE DEPARTMENT OF ENGINEERING AND SURVEYING 617

CHAPTER IV.

ORDINANCES RELATING TO THE FIRE DEPARTMENT.....625

CHAPTER V.

ORDINANCES RELATING TO THE POLICE DEPARTMENT.....648

CHAPTER VI.

ORDINANCES RELATING TO THE CITY DEBT.....649

CHAPTER VII.

Page
ORDINANCES RELATING TO NUISANCES.....742

CHAPTER VIII.

ORDINANCES RELATING TO THE HEALTH OF THE CITY.....770

CHAPTER IX.

ORDINANCES RELATING TO PUBLIC MARKETS.....815

CHAPTER X.

ORDINANCES RELATING TO BUILDING REGULATIONS.....836

CHAPTER XI.

ORDINANCES RELATING TO FOOTWAYS AND SIDEWALKS.....905

CHAPTER XII.

ORDINANCES RELATING TO SEWERS, DRAINS AND RUNS.....908

CHAPTER XIII.

ORDINANCES RELATING TO NAVIGATION.....915

CHAPTER XIV.

ORDINANCES RELATING TO WHARVES.....919

CHAPTER XV.

Page
ORDINANCES RELATING TO RAILROADS.....922

CHAPTER XVI.

ORDINANCES RELATING TO SALES AND LEASES OF REAL ESTATE 924

CHAPTER XVII.

ORDINANCES RELATING TO TAXATION.....929

CHAPTER XVIII.

ORDINANCES RELATING TO STREETS.....932

CHAPTER XIX.

MISCELLANEOUS ORDINANCES 952

PART V.

RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE STREET AND SEWER DEPARTMENT 993

PART VI.

RULES AND REGULATIONS OF THE BOARD OF WATER COMMISSIONERS 1075

PART VII.

Page

RULES AND REGULATIONS OF THE BOARD OF PARK COMMISSIONERS 1093

APPENDIX 1097

INDEX .....

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ANNOTATED by

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TABLE OF CASES CITED

A

Referred to in this volume on pages

Anderson v. Wilmington, 2 Penn. 28 ..... 92, 126, 742, 1022
Anderson v. Wilmington, 6 Penn. 485 ..... 114, 126
Anderson & Son v. Wilmington, 8 Houst. 516 ..... 75, 92, 125, 126, 131, 245, 1004, 1040, 1051, 1052
Attorney General, &c. v. Wilmington et al., 4 Del. Ch. 575 ..... 80, 170

B

Bailey v. P., W. & B. R. R. Co., 4 Har. 389 ..... 189, 512
Barclay v. Hartman, 2 Marv. 351 976
Benson v. Wilmington, 9 Houst. 359 ..... 115, 126, 145, 250, 621
Betts v. Dick, 1 Penn. 268 101
Biggs, Clerk, &c. v. Buckingham, et al., 6 Del. Ch. 267 89
Bradford v. Mote, Coll'r., &c., et al., 2 Marv. 159 489
Brown v. Wil. C. Ry. Co., 1 Penn. 332 1028
Bullock's Admr., p. b., v. W. C. Ry. Co., d. b., 5 Penn. 209 ..... 58, 68, 175, 205, 207, 208, 209, 225, 229, 230, 1025
Burton v. P., W. & B. R. R. Co., 4 Har. 252 754

C

Carswell, Admr., &c., v. Wilmington, 2 Marv. 360 ..... 126, 627, 749, 1024
Cecchi v. Lindsay, et al., 1 Boyce, 185 556
Clark v. Wilmington, 5 Har. 243 ..... 115, 126, 130, 225, 250, 621, 622
Clawson v. Primrose, 4 Del. Ch. 643 134
Colbourn v. Wilmington, 4 Penn. 443 126
Cook v. Wil. C. E. Co., 9 Houst. 306 126
Cooper v. Del. G. E. Ry. Co., et al., 8 Del. Ch. 462 ..... 497, 503
Cox v. Wil. C. Ry. Co., 4 Penn 162 1028
Coyle v. McIntire, 7 Houst. 44 ..... 19, 28, 30, 53, 70, 133, 146, 174, 175, 176, 179, 513, 514, 924
Cummins v. Spruance, et al., 4 Har. 315 200
Curry v. Jones, et al., 4 Del. Ch. 559 ..... 93, 114

D

Referred to in this volume on pages

Di Prisco, Admr., v. W. C. Ry. Co., 4 Penn. 527 1028
Dodd, et al., v. Hart, Overseer of Roads, 8 Del. Ch. 448 114
Dover v. Tawressey, 2 Marv. 285 ..... 30, 45
Downs v. Smyrna, 2 Penn. 132 ..... 126, 146

E

Elliott, et al., v. Newark, 8 Del. Ch. 64 ..... 54, 55
Emory & Co., v. Laurel, 3 Penn. 67 ..... 29, 180
English v. Wilmington, 2 Marv. 63 ..... 92, 104, 114, 118, 151, 193, 238, 239, 241, 955
Equitable G. & T. Co., v. Donahoe, 8 Del. Ch. 422 243
Equitable G. & T. Co., v. Donahoe, Coll'r, &c., 3 Penn. 191 ..... 91, 100

F

Farley, et al., v. Wil. & N. C. E. Ry. Co., 3 Penn. 581 1028
Farmers Bank v. Ball, State Treasr., 2 Penn. 374 29
Flanagan's Admr., v. Wilmington, 4 Houst. 548 ..... 126, 145, 749
Fleith v. Cunningham, unreported 125, 126, 1007
Fletcher v. Wilmington, unreported 48, 50
Fooks v. Hearn, 5 Harr. 363 584
Forbes, d. b. a., v. Wilmington, p. b. r., 1 Marv. 186 778
Forbes, et al., p. b., v. State, d. b., 2 Penn. 197 ..... 38, 41, 46
Ford v. Warner Co., 1 Marv. 88 ..... 744, 757, 762, 1029
Ford v. Whiteman, 2 Penn. 355 ..... 749, 1022
Forman v. Ford, et al., 6 Del. Ch. 47 ..... 184, 981
Foster v. Wilmington, 8 Houst. 415 ..... 210, 975
Frieszleben v. Shallcross, et al., 9 Houst. 1 ..... 9, 88, 92, 93, 94, 328, 381
Fulton v. Dover, 6 Del. Ch. 1; 8 Houst. 78 ..... 21, 114, 118, 252

G

Gardner, d. b. a., v. Nolen, p. b. r., 3 Har. 420 393
Gardner v. Grubb, 4 Houst. 448 394
Garrett v. Peoples Ry. Co., 6 Penn. 29 ..... 558, 560
Giles v. Diamond S. Iron Co., 7 Houst. 453 ..... 58, 145, 856
Godwin, d. b. a., v. State, p. b. r., 1 Boyce 173 358
Goldstein, Admr., v. Peoples Ry. Co., 5 Penn. 306 923
Gray, Atty. Gen'l., ex rel., Thomas v. Baynard, 5 Del. Ch. 499 ..... 58, 59, 192, 761, 841, 859, 1014
Gray v. State, 2 Har. 76 ..... 7, 11, 38, 41, 44, 46
Gray, d. b. a., v. Wilmington, p. b. r., 2 Marv. 257 ..... 58, 59, 535, 810
Green v. Newark, 5 Penn. 316 126
Griffith, et al., v. Johnson, Admr., 1 Har. 136 90
Grimshaw v. Wilmington, et al., 5 Del. Ch. 183 63

H

Referred to in this volume on pages

Hannigan v. Wright, 5 Penn. 537 558
Harlan & Hollingsworth Co., v. Paschall, 5 Del. Ch. 435 ..... 184, 185, 186, 187, 189, 190, 192, 197
Harrigan v. Wilmington, 8 Houst. 140 ..... 36, 126, 225, 226, 231, 239, 619
Hartman, d. b., v. Wilmington, p. b., 1 Marv. 215 ..... 138, 141, 142, 774, 780, 784, 778
Hastings v. Henry, 1 Marv. 287 309
Hawkins v. Dougherty, Coll'r., 9 Houst. 156 93
Hawkins, d. b. a., v. Mendenhall, p. b. r., 3 Houst. 216 134
Herbert, State Treas'r., &c., v. B. & P. R. R. Co., 8 Houst. 120 85
Hession v. Wilmington, 1 Marv. 122 ..... 126, 226, 231, 239
Higgins, p. b., v. Wilmington, d. b., 3 Penn. 356 126
Higgins v. W. C. Ry. Co., 1 Marv. 352 ..... 746, 1028
Hitchens v. School Dist., Sussex Co., 5 Penn. 325 421
Homewood, d. b. a., v. Wilmington, p. b. r., 5 Houst. 123 152
Huey v. Richardson, 2 Har. 206 ..... 32, 36, 225, 231, 239, 619, 626
Hulley v. S. T. & S. D. Co., et al., 5 Del. Ch. 578 134
Hunter v. Lank, 1 Har. 10 20
Husbands, Coll'r., p. b. a., v. Talley, d. b. r., 3 Penn. 88 ..... 323, 448

I

In Re Petition of Alston, et al., 1 Penn. 359 ..... 130, 225
In Re Petition of Front and Union St. Ry. Co., 1 Penn. 370 ..... 499, 503, 507
In Re Receivership Lord & Polk Chem. Co., 7 Del. Ch. 248 ..... 96, 99
In Re Lee, et al., Petition, 4 Penn. 576 111
In Re Phillips Petition, 5 Penn. 133 47

J

Jarrell v. Wilmington, 4 Penn. 454 ..... 126, 761, 822
Jessup & Moore Paper Co., v. Ford, et al., 6 Del. Ch. 52 ..... 184, 981
Johnson v. Stayton, 5 Har. 448 252
Johnson, d. b. a., v. State, p. b. r., 2 Marv. 372 ..... 141, 772
Jones v. Belt, 8 Houst. 562 ..... 58, 746

K

Keller v. Taylor, 2 Houst. 20 ..... 47, 50
Kent v. Wilmington, 7 Houst. 397 ..... 126, 177, 944, 950, 1004
Keogh v. Wilmington, 4 Del. Ch. 491 ..... 234, 438, 614, 979
Knight, et al., d. b., v. Ferris, p. b., 6 Houst. 283 ..... 362, 408, 412
Knopf v. P., W. & B. R. R. Co., 2 Penn. 392 ..... 58, 754, 756
Knowles v. Morris, 6 Penn. 76 ..... 88, 97, 101, 107
Kyne v. W. & N. R. R. Co., 8 Houst. 185 756

L

Law and Order Soc'y v. Wilmington, 4 Penn. 366 ..... 144, 536, 759
Laws, d. b., v. Jones, p. b., 2 Har. 345 100

Referred to in this volume on pages

Lawson v. Buzines, 3 Har. 416....212, 213
Lee v. Wilmington, 1 Marv., 65....29, 69, 108, 158, 793
Licznerski v. W. C. Ry. Co., 5 Penn. 201....754
Liebig Mfg. Co., v. Wil. Board of Health, 8 Del. Ch. 26....138, 140, 141, 142, 773
Lofland v. Orten, et al., 4 Houst. 622....225
Lord & Polk Chem. Co., 7 Del. Ch. 248....96, 99
Louth, et al., v. Thompson, 1 Penn. 149....126, 938, 939
Lurtz v. Registration Board, Kent Co., 1 Marv. 450....309

M

MacFeat's Admr., v. P., W. & B. R. R. Co., 5 Penn. 52....58, 145, 754
Magarity v. Wilmington, 5 Houst. 530....126, 226, 231, 239
Marshall v. Cleaver, 4 Penn. 450....213
Martin v. B. & P. R. R. Co., 2 Marv. 123....755
Maxwell, Admr., v. W. C. Ry. Co., 1 Marv. 199....754, 1028
Mayor and Council of Wilmington (See Wilmington)
McAllister v. Peoples Ry. Co., 4 Penn. 272....126
McCaffrey v. Thomas, 4 Penn. 437....58, 145, 213
McCormick v. Fisher, Mayor, &c., 5 Penn. 273....33, 140, 180, 797
McCoy, et al., d. b., v. State, ex rel., Allee, et al., p. b., 2 Marv. 543....412
McCoy v. P., W. & B. R. R. Co., 5 Houst. 599....126, 756, 757
Mealey v. Buckingham, et al., 6 Del. Ch. 356....102
Monaghan v. Lewis, Recr. of Taxes, 4 Penn. 364; (5 Penn. 218)....25, 84, 100, 488, 490
Moore, et al., v. Whitaker, 2 Har. 50....34
Morris, et al., v. Pilot Com'rs, et al., 7 Del. Ch. 136....81, 151, 155, 162, 166, 173, 420, 447, 542, 917, 961, 1022, 1036
Morrow, d. b. a., v. State, p. b. r., 2 Marv. 4....155
Murphy v. Countiss, 1 Har. 143....213
Murphey, et al., v. Wilmington, 5 Del. Ch. 281; (6 Houst. 108)....88, 93, 100, 107, 114, 118, 126, 137, 193, 229, 241, 242, 243, 246, 909

N

Neal's Admr., v. Wil. & N. C. E. Ry. Co., 3 Penn. 467....126
Neary, Coll'r, &c., v. P., W. & B. R. R. Co., 7 Houst. 419....84, 100, 243
Nevin v. Disharoon, 6 Penn. 278....20
N. C. & D. C. Ry. Co., v. Del. R. R. Co., 8 Del. Ch. 419....495, 506
Nivin, use of Cling, v. Stevens, 5 Har. 272....20, 134, 135, 618, 622

O

O'Daniel v. Bakers' Union, 4 Houst. 488....134
Ogle v. P., W. & B. R. R. Co., 3 Houst. 267, &c....252
Oxy-Hydrogen Co., v. Simmons, et al., 3 Penn. 291....255

P

Referred to in this volume on pages

Petit v. Colmery, 4 Penn. 266 ..... 213, 214, 215
Petition of Alston, et al., 1 Penn. 359 ..... 130, 225
Petition of Front & Union St. Ry. Co., 1 Penn. 370 ..... 499, 503, 507
Petition of Lee, et al., 4 Penn. 576 111
Petition of Phillips, 5 Penn. 133 47
P., W. & B. R. R. Co., d. b. a., v. Bowers, p. b. r., 4 Houst. 506 498
P., W. & B. R. R. Co., v. Neary, Coll'r, &c., 5 Del. Ch. 600 ..... 84, 100, 243
P., W. & B. R. R. Co. v. Wil. C. Ry. Co., 8 Del. Ch. 134 ..... 495, 506
Pickering v. Day, et al., 2 Del. Ch. 333 ..... 35, 94, 95, 166, 169, 593, 827, 837
Pierce v. Lemon, 2 Houst. 519 134
Pierce v. Wilmington, 2 Marv. 306 126
Poole v. Greer, 6 Penn. 220 252
Porter v. Sawyer, 1 Har. 517 ..... 393, 394
Pratesi, d. b. a., v. Wilmington, p. b. r., 4 Penn. 258 50
Price v. Warner Co., 1 Penn. 462 ..... 50, 1028
Public Road, 5 Har. 242 114

Q

Quillen v. Betts, 1 Penn. 53 ..... 20, 135
Quinby & Co., v. Wilmington, et al., 5 Houst. 26 ..... 29, 180

R

Rash v. Allen, unreported 32, 54, 55
Reed v. Queen Anne's R. R. Co., 4 Penn. 413 754
Rettew, Recr. of Taxes, v. St. Patrick's R. C. Church, 4 Penn. 593 487
Reynolds, Jr., v. Naudain, 2 Har. 317 ..... 745, 746
Rhoads v. Given, 5 Houst. 183 ..... 97, 99
Rice v. Foster, 4 Har. 479 ..... 46, 55, 57, 417, 418
Road Case, 5 Har. 242 114
Road Commissioners, 2 Penn. 466 83
Robinson v. Wilmington, 8 Houst. 409 ..... 114, 125, 126
Robinson v. Simpson, 8 Houst. 398 ..... 58, 746, 748
Ross v. Allmond, unreported 32, 54, 55
Rossell, d. b. a., v. Bartram, p. b. r., 1 Penn. 242 29

S

Sayers, Assessor, &c., v. W. & N. R. R. Co., 3 Penn. 249 ..... 490, 524
Schelich v. Wilmington, 1 Boyce 57 ..... 126, 177, 944, 1004
Seward, et al., v. Wilmington, 2 Marv. 189, 375 ..... 124, 126, 742
Shockley, et al., d. b. a., v. Shepherd, p. b. r., 9 Houst. 270 745
Simeone v. Lindsay, 6 Penn. 224 558
Smith v. Riding, 9 Houst. 235 83
Smith v. School District, Sussex Co., 1 Penn. 401 421
Smyrna, &c., Steamboat Co., v. Whilldin, 4 Har. 228 ..... 200, 746
Snyder v. Peoples Ry. Co., 4 Penn. 145 1028

Referred to in this volume on pages

Sparks, et al., v. Farmers Bank, 3 Del. Ch. 274 158
State v. Allmond, 2 Houst. 612 417
State v. Anderson, 1 Marv. 526 ..... 44, 297, 320, 426
State v. Bell, 5 Penn. 192 ..... 289, 320
State v. Brand, 2 Marv. 459 ..... 272, 289, 295, 297, 321, 347, 362
State v. Brown, 5 Har. 505 214
State v. Buckley, 5 Har. 508 750
State v. Burchinal, 4 Har. 572 ..... 750, 763
State v. Butler, 2 Penn. 127 975
State v. Caldwell, 1 Marv. 555 ..... 292, 320
State v. Christie, 2 Marv. 443 42
State v. Churchman, 3 Penn. 167; 361 ..... 32, 37, 38, 41, 62, 227
State v. Clark, 2 Marv. 456 ..... 295, 297, 362
State v. Clarke, 3 Har. 557 ..... 305, 405
State v. Collins, 1 Penn. 420 306
State v. Conway, 2 Marv. 453 295
State v. Crocker, 1 Houst. Cr. Cas. 434 214
State v. Day, 5 Penn. 101 42
State v. Dennis, 2 Marv. 433 213
State v. Fountain, et al., 6 Penn. 520 418
State v. Frest, 4 Har. 558 ..... 31, 294, 305, 356, 405
State v. Greenwood, 2 Penn. 379 ..... 43, 46
State v. Harker, 4 Har. 559 ..... 293, 358
State v. Hegeman, 2 Penn. 147 58
State v. Kumpel, Jr., 2 Marv. 464 152
State v. Lafferty, 5 Har. 491 ..... 231, 214, 750, 759, 763
State v. Lally, 2 Marv. 424 ..... 287, 292, 320
State v. Levy Court N. C. Co., 1 Penn. 597 ..... 60, 526, 986
State v. Lewis, 4 Penn. 332 745
State v. List, 1 Houst. Cr. Cas. 133 ..... 214, 215
State v. Luce, et al., 9 Houst. 396 ..... 58, 140, 141. 766, 773, 774, 775, 790
State v. Lynch, 2 Har. 88 42
State v. Lynn, 3 Penn. 316 82
State v. Mahon, 3 Har. 568 ..... 212, 213
State v. Matlack, 5 Penn. 401 ..... 32. 276, 295. 325. 346. 352, 361, 381
State v. M'Donald, 4 Har. 555 ..... 294, 305, 356, 405
State v. Moore, 2 Penn. 299 ..... 46, 306
State v. Mooris, 1 Har. 326 20
State v. Mundy, 2 Marv. 429 300
State v. Mundy, 1 Boyce, 40 42
State v. Oliver, 2 Houst. 585 ..... 213, 214
State v. O'Niel, 1 Houst. Cr. Cas. 468 ..... 213, 215
State v. Porter, 4 Har. 556 ..... 294, 356
State v. Reybold, Jr., 5 Har. 484 ..... 189, 190, 252
State v. Rollo, 3 Penn. 421 529
State v. Russell, 1 Houst. Cr. Cas. 122 213

Referred to in this volume on pages

State v. Scott, 4 Penn. 538 42
State v. Smith, 9 Houst. 143 ..... 103, 613
State v. Southard, 6 Penn. 247 252
State v. Townsend, 5 Har. 487 ..... 212, 215
State v. Vincent, 1 Marv. 560 ..... 292, 320
State v. Walter, 2 Marv. 444 763
State v. Wetherall, et al., 5 Har. 487 ..... 58, 140, 773
State v. Wil. City Council, 3 Har. 294 ..... 8, 31, 32, 38, 54, 62, 398, 414
State v. Wood, unreported 150, 153, 154, 819
State, ex rel., McVey, v. Burris, 4 Penn. 3 ..... 30, 70, 161
State, ex rel., McCormick, v. Fisher, Mayor, &c., 5 Penn. 273 ..... 33, 140, 180, 797
State ex rel., Att'y Gen'l, v. Lewis, et al., unreported 338
State, ex rel., Allee, et al., v. McCoy, et al., 2 Marv. 465 ..... 369, 412
State, ex rel., McKee, et al., v. New Castle, et al., 2 Penn. 466 83
State, ex rel., Wilmington, v. Sayers, unreported 103, 417, 418, 988
State, ex rel., Oxy-Hydrogen Co., v. S. & S. Dep't., 3 Penn. 291 255
State, ex rel., Wright, v. Warren, 1 Houst. 39 ..... 362, 408, 412
State, ex rel., Conway, v. Willis, et al., unreported 159, 160
State, use of Tharp, et al., v. Emerson, et al., 3 Houst. 85 103
State Treasurer v. Whitaker, et al., 2 Har. 136 ..... 63, 82
Steamboat Co., v. Whilldin, 4 Har. 228 ..... 200, 746
Stidham, Jr., v. Delaware City, 6 Penn. 359 126
Stimmel v. Brown, 7 Houst. 219 135
Stoeckle, et al. v, Levy Ct. N. C. Co., et al., 8 Del. Ch. 150 103
Street & Sewer Dept., v. Connell, Clerk, &c., 2 Penn. 571 ..... 58, 85, 129, 151, 232, 744, 829, 919
Stroud, d. b. a., v. Smith, p. b. r., 4 Houst. 448 30

T

Taylor v. Trustees of Poor, N. C. Co., 1 Penn. 247 ..... 51, 71
Tilghman v. Cruson, 4 Har. 341 100
Town of Dover v. Tawressey, 2 Marv. 285 ..... 30, 45
Tully's Admr., v. P., W. & B. R. R. Co., 3 Penn. 455 922

U

U. S. Sand Filtration v. Bird, unreported 34, 180

W

Weldin, et al., v. Wilmington, 3 Penn. 472 ..... 80, 133, 174, 175, 177, 179, 182, 225, 456
Whiteman's Ex'x, v. Wil. & S. R. R. Co., 2 Har. 514 118
Wiley, Trustee, v. Wilmington, Ch. Rec. V-2-110 114
Wilkins v. Wilmington, 2 Marv. 132 126
Williamson, et al., v. Gordon Heights Ry. Co., 8 Del. Ch. 192 1031
Willis v. Ross, unreported 54, 414
Wilman v. Peoples Ry. Co., 4 Penn. 260 1028
Wilmington, et al., v. Addicks, et al., 7 Del. Ch. 56; 8 Del. Ch. 310 255

Wilmington v. Davis, unreported 128, 1014, 1017
Wilmington, d. b., v. Ewing, et al., p. b., 2 Penn. 66.....19, 28, 29, 122, 123, 124, 125, 126, 127
Wilmington v. Hedges et al., 5 Har. 421.....29, 64
Wilmington v. Hertel, unreported 767
Wilmington v. Jenny, unreported 1016
Wilmington v. McNabb, unreported 128, 156, 178, 231, 938, 1014
Wilmington v. Reed, unreported 57, 138, 163
Wilmington v. Vandegrift, 1 Marv. 5.....37, 38, 42, 43, 57, 126, 145, 208, 744, 1021
Wilmington v. Wicks, 2 Marv. 297.....100, 957, 959
Wil. City Ry. Co., v. Peoples Ry. Co., unreported.....495
Wil. City Ry. Co., d. b., v. White, p. b., 6 Penn. 363.....756
Wil. City Ry. Co., v. Wil. & B. S. Ry. Co., 8 Del. Ch. 468.....132, 494, 495, 496, 498, 1031
Wilson v. Rockland Mfg. Co., 2 Har. 67.....745

Z

Zuchowski, d. b., v. State, p. b., 3 Penn. 339.....37, 41, 42, 48

PART I.

ORIGINAL CHARTER

OF THE

Borough of Wilmington.

Original Charter

OF THE

Borough of Wilmington.[1]

GEORGE THE SECOND, *by the grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth.*

TO ALL TO WHOM THESE PRESENTS SHALL COME GREETING:

WHEREAS, Our loving subjects, Joseph Pennock, William Shipley, Joshua Way and others, freeholders and inhabitants of a tract of land situated on Christiana river, in our County of New Castle, and within the Government of our Counties of New Castle, Kent and Sussex on Delaware, having been at great charge in purchasing of the said land, building of houses,

---

[1]This is the original Charter of the Borough of Wilmington; and though its provisions have, in the main, been superseded by subsequent legislation, yet, because of its antiquity, and because rights, public and private, of a continuing nature, have been acquired under it, it has been deemed proper to publish it. The date of the grant of the Borough Charter is Nov. 16th, 1739, (altered and re-established by act of Jan. 31st, 1809, 4th vol. D. L. 275-288, &c.) The date of the act of the Legislature superseding the Borough Charter and continuing its incorporation as a city is Jan. 18, 1832, (8th vol. D. L. c. 108, p. 97.)

removing their families, and making great improvements thereon, so that by their industry and expense, it is at this time in a flourishing condition:

And whereas the freeholders and inhabitants aforesaid have humbly besought our trusty and well beloved Thomas Penn, Esquire, one of the proprietors of the counties aforesaid, and George Thomas, Esquire, with our Royal approbation, Lieutenant Governor thereof, under John Penn, the said Thomas Penn and Richard Penn, Esquires; true and absolute proprietors of the Province of Pennsylvania, and counties aforesaid, for our letters patent under the great seal of the said Government, to erect the said tract of land into a Borough, and to incorporate the freeholders and inhabitants of the same with perpetual succession, and to grant to them such immunities and privileges as might be thought necessary for the well ordering and governing thereof:

Therefore, Know Ye, that We, favoring the petition and good purposes of the said freeholders and inhabitants, and willing to promote trade, industry, rule and good order, amongst all our subjects, of our special Grace, certain knowledge, and mere motion, have erected, and by these presents do erect the said tract of land into a Borough, forever hereafter, to be called by the name of WILMINGTON, which said Borough shall extend, be limited and bounded, in the manner it is now laid out, pursuant to the plan thereof hereunto annexed.

And we do further grant and ordain, that the streets of the said Borough shall forever continue as they are now laid out and regulated, and that the end of each street extending into the River Christiana, and such other places on the said River, or elsewhere within the limits aforesaid, as shall hereafter be thought fit, shall be and continue free for the use and service of the said Borough, and the inhabitants thereof, who may improve the same for the best advantage of the said Borough, and build wharves so far out into the said River as the Burgesses and assistants hereinafter mentioned shall from time to time see meet, the ends of which streets and

wharves aforesaid, shall be and remain for the use of the said Borough forever for lading and unlading of goods, wares and merchandise, out of ships, boats or other vessels whatsoever.

And we do nominate and appoint William Shipley and Thomas West to be the present Burgesses, and Timothy Stidham, Joseph Hewes, Joshua Way, Joseph Way, George Howell and David Ferris, assistants, for advising, aiding and assisting the said Burgesses in the execution of the powers and authorities herein given them, and Enoch Lewis to be High Constable, and Goldsmith Edward Folwell to be Town Clerk, until the eighth day of September next ensuing, and from thence until others shall be duly elected (*a*) or appointed in their places, as is hereinafter directed and no longer.

(*a*) *Harrington, Justice*: "The corporation of Wilmington enjoyed by patent, dated in 1739, the right to elect two burgesses and six assistants, with a high constable and town clerk," &c

Gray vs. The State of Delaware, 2 Har. 76 at 93. (yr. 1836)

(See page 8, paragraph 8, as to one's right to vote.)

And we do by these presents, for us, our heirs and successors, further give, grant and declare, that the said Burgesses, freeholders, and inhabitants, within the Borough aforesaid, and their successors, forever hereafter, shall be one body politic and corporate, in deed and in name, and them by the name of the Burgesses and inhabitants, of the Borough of Wilmington, in the County of New Castle, on Delaware, one body politic and corporate, in deed and in name.

We do for us, our heirs and successors, fully create, constitute and confirm by these presents, and by the same name of the Burgesses and inhabitants of this Borough of Wilmington, that they may have perpetual succession, and that they, and their successors, by the name of the Burgesses and inhabitants of Wilmington be, and at all times forever hereafter shall be persons able and capable, in law, to have, get, receive and possess lands, tenements, rents, liberties, jurisdictions, franchises and hereditaments to them and their suc-

cessors in fee simple, or for term of life, lives, years or otherwise, and also goods, chattels and other things, of what nature or kind soever, and also to give, grant, let, sell, and assign the same lands, tenements, hereditaments, goods and chattels, and to do and execute all other things about the same, by the name aforesaid, and also that they be, and shall be, forever hereafter, persons able and capable in law, to sue, and be sued, plead and be pleaded, answer and be answered unto, defend and be defended, in all or any of our Courts, or other places, and before any Judges, Justices and other persons whatsoever, within the Government of the said Counties aforesaid, in all manner of actions, suits, complaints, pleas, causes and manners whatsoever, and that it shall and may be lawful, to and for the Burgesses and inhabitants of Wilmington aforesaid, and their successors forever hereafter, to have and use one common seal, for the sealing of all business whatsoever, touching the said Corporation, and the same, from time to time, at their will, to change and alter. (*a*)

(*a*) *Harrington, Justice*: "The borough of Wilmington was incorporated by letters patent in November, 1739. It received a charter from the General Assembly in 1772," &c. State vs. Wil. City Council, 3 Har. 294 at 301. (yr. 1840)
(See page 7, paragraph 6.)

And we do, for us, our heirs, and successors further and by these presents grant full power and authority, for the Burgesses, Constable, and assistants, freeholders, together with such inhabitants, house-keepers, within the said Borough, as shall have resided therein, at least for the space of one whole year next preceding any such election, as is hereinafter directed, and hired a house and ground, within the said Borough, of the yearly value of five pounds or upwards, (*a*) on the eighth day of September, yearly, unless that day happen to fall on Sunday, and then on the next day following, publicly to meet in some convenient place, within the said Borough, to be appointed by the Chief Constable, and then and there to nominate, elect, and choose by the ballot, able men of the inhabitants of the said Borough, to be Burgesses, High Constable, and such other officers within the same, for serving and assisting the Burgesses, in managing the affairs

of the said Borough, and of keeping of peace and good order therein, from time to time as to the majority of the said electors shall seem requisite and necessary; which election shall be taken from time to time, by the High Constable, of the year preceding, and the names of the persons so elected, shall be certified under his seal to the Governor for the time being, and the Burgess who shall have the majority of votes shall be called the Chief Burgess of the said Borough, but in case it shall so happen that the said freeholders and inhabitants, house-keepers aforesaid, shall neglect or refuse to elect, and choose Burgesses and other officers in manner aforesaid, or that no return of their names, shall be made to the Governor within five days next after such elections, yearly and every year, as aforesaid, that then it shall and may be lawful for the Governor for the time being to nominate, commission, and appoint Burgesses, a Constable and assistants, for the year, to hold and continue their respective offices until the next time of annual elections, appointed as aforesaid, and so as often as occasion shall require.

(*a*) An interesting account of the various acts relating to the qualifications of electors in the colonial period, is contained in the case of Frieszleben vs. Shallcross et al., 9 Houst. 1 at from 60 to 64. Among other things is the following:

Comegys, C. J.: "From this review of the law which has always prevailed here in regard to the qualification of voters, two things seem to be clear,—that is, that the right to vote was conditional altogether upon the payment of taxes previously assessed, ("scot and lot," as tersely expressed in the homely but perfectly well understood language of the ancient enactments,) and that the poll-tax was adopted 100 years, at least, before 1797, for those who had no property." 64-65 (yr. 1890.)

And we further will and ordain, that all the said Burgesses for the time being, shall be, and are hereby empowered, and authorized, to be conservators of the Peace within the said Borough, and shall have power by themselves, and upon their own view, or in other lawful manner, to remove all nuisances and encroachments on the said streets, public landing places, and highways within the said Borough aforesaid, as they shall see occasion, with power, also, to arrest, imprison and punish rioters, and other breakers of the peace or good behaviour, award process, bind to the peace or good behaviour, commit to prison, and to make calendars of the

prisoners by them committed, and the same to return, together with such recognizances and examinations as shall be by them taken, to the next Court of Quarter Sessions of the County of New Castle, there to be proceeded on, as occasion may or shall require, and to do all and singular, other matters and things within the said Borough, as fully and effectually to all intents and purposes, as Justices of the peace, in their respective Counties, can or may lawfully do; (a) but before any of the said Burgesses, Constable, or other officers, shall take upon them the execution of their respective offices, they shall take and subscribe to the oath or affirmation of allegiance, and such other oaths and affirmations, as by the laws in our Government in such cases are provided, together with the oaths or affirmations for the due execution of their respective offices, and every Chief Burgess so elected or appointed, from year to year, as aforesaid, shall, within five days immediately after the election, present himself to be qualified, by taking the oaths or affirmations aforesaid before the Governor for the time being, or before such other person as the Governor shall think fit to appoint for that purpose, and on failure of his so presenting himself, unless disabled by sickness or other reasonable cause, such as shall be allowed of by the Governor for the time being, another Chief Burgess, shall, from time to time, and as often as occasion shall require be appointed, in the stead of such person so failing to appear and qualify himself as before directed, which Burgess so to be appointed by the Governor for the time being, shall and may enjoy their offices, until the day of election next ensuing such their appointment, and the Chief Burgess having qualified himself in the manner aforesaid, shall and may enter upon his office, and the other Burgess, Constables or other officers, shall and may qualify themselves for their respective offices, by taking and subscribing the oaths or affirmations aforesaid, before the said Chief Burgess, or before any one of the Justices of the Peace of the said County of New Castle for the time being, who are hereby authorized and empowered to administer the same.

(a) *Harrington, Justice*: "For though it is contended that the franchise of holding a court existed in the corporation of the borough of Wilmington, under its charter of 1772,

* * * it is admitted that this franchise was but the power to appoint certain officers called burgesses, whose judicial functions extended only to the discharge of those duties within the borough, "which justices of the peace for the county of New Castle could lawfully do."

Gray vs. The State of Delaware, 2 Har. 76 at 89. (yr. 1836)

The franchise of holding a court, also existed under the letters patent granted in November, 1739. Justice Harrington refers to this in the above mentioned case in the following language:

These "burgesses by the same patent" (1739) "and also by the act of 1772, were invested with all the judicial powers, within the corporation limits, of justices of the peace within the county." 93.

And we do further grant for us, our heirs and successors, to the Burgesses, freeholders and inhabitants, housekeepers aforesaid, that it shall and may be lawful for them, to assemble themselves together within the Borough aforesaid, at such time and place, as the Burgesses herein before nominated shall appoint, and then and there, by a majority of voices to elect some fitting place or places, within the said Borough, for holding of Fairs and Markets, which place or places so made choice of, being recorded by the Town Clerk, in some book by him to be kept for the recording of the transactions of the said Corporation, shall thereafter remain, for the holding of the said Fairs and Markets, without any alteration forever, which election, the principal Burgess, or on his neglect, refusal or absence, the other Burgess shall take in such manner, and at such times, as by the said Burgesses, High Constable and assistants shall be agreed on.

And we do further give and grant, to the Burgesses and inhabitants aforesaid, that they and their successors forever hereafter may have, hold and keep within the said Borough two markets in each week, that is to say, one market on Wednesday, and one market on Saturday, in every week of the year forever.

Also two fairs there in every year, the first to begin on the twenty-fourth day of October next ensuing, and to continue that day and the next day following, and the other of the said fairs to begin on the twenty-eighth day of April, and to continue that day, and the next day after, and when either of those days shall happen to fall on Sunday, then the said fairs to be kept the next day, or two days following, together

with the free liberties, customs, profits and emoluments to the said markets and fairs belonging or in anywise appertaining forever.

And we do hereby further grant, and ordain, that there shall be a Clerk of the Market for the said Borough, who shall have the assize of bread, wine, beer, wood, and all other provisions brought for the use of the said inhabitants, who shall and may perform all things belonging to the office of a Clerk of the Market within the said Borough, and that Goldsmith Folwell shall be the present Clerk of the Market, who shall be removable for any malfeasance in his office by the Burgesses and assistants aforesaid and another from time to time appointed and removed, as they shall find it necessary.

And we do further grant unto the said Burgesses, High Constable and assistants, and their successors, as much as in us is, that if any of the inhabitants of the said Borough shall be hereafter elected to the office of Burgess, Constable, or assistants, and having notice of his or their election, shall refuse to undertake, and execute that office to which he is so chosen, it shall and may be lawful for the Burgesses, High Constable and assistants then acting, to impose such moderate fines on the person or persons so refusing, as to them shall seem meet, so always that such fines imposed on a Burgess elect, do not exceed ten pounds, and the fine on the High Constable or an assistant elect, do not exceed five pounds each, to be levied by distress and sale of the goods of the party refusing, by warrant under the hand and seal of one of the said Burgesses, or by any other lawful way or means whatsoever, for the use of the said Corporation, and in any such case it shall and may be lawful for the said inhabitants to proceed to the choice of some other fit person or persons, in the stead of such who shall so refuse; and it shall and may be lawful for the said Burgesses, High Constable, and assistants, for the time being, to assemble Town Meetings as often as they shall find occasion, at which meetings they may make such ordinances and rules not repugnant to or inconsistent with the laws of the said government as to the great-

est part of the inhabitants seem necessary and convenient for the good government of the said Borough, and the same rules and orders to put in execution, and the same to revoke, alter, and make anew, as occasion shall require, and also to impose such mulcts and amercements, upon the breakers of the said ordinance as to the makers thereof shall be thought reasonable, to be levied as above directed in case of fines, to the use of the said Borough, without rendering any account thereof to us, our successors, or to the proprietors aforesaid, their heirs or successors, also at the said meetings to mitigate or release the said fines and mulcts, upon the submission of the parties.

And we further grant, that it shall and may be lawful for the Burgesses and assistants and inhabitants aforesaid, and their successors, when they shall see occasion, to erect a Court House within the said Borough.

And we further will and grant, that when any doubts shall happen to arise, touching this present Charter, that the same shall, in all courts of law and equity, be construed and taken most favorably and beneficially for the said Corporation.

IN TESTIMONY WHEREOF, we have caused these our letters to be made patent: Witness, George Thomas, Esquire, with our Royal approbation, Lieutenant Governor and Commander in Chief of the Province of Pennsylvania and counties aforesaid, under John Penn, Thomas Penn, and Richard Penn, Esquires, true and absolute proprietaries of the Province and counties aforesaid, the sixteenth day of November, in the year of our Lord one thousand seven hundred and thirty-nine,[1] and in the thirteenth year of our reign.

GEORGE THOMAS.

[1]These dates though seemingly inconsistent, are correct, and are to be explained by the fact that until the adoption of the new style (for the computation of time), in England, (1752), the 25th of March was New Year's day; so that the 16th day of November, 1739, was actually four months prior to the 17th day of March, 1739.

I do hereby certify that the above and within mentioned charter is recorded in the book M., page 350, 351, 352, 353, 354, at New Castle, in the Rolls office. Given under my hand and seal, the 17th day of March, 1739.[1]

WILLIAM SHAW, Recorder.

[1]These dates though seemingly inconsistent, are correct, and are to be explained by the fact that until the adoption of the new style (for the computation of time), in England, (1752), the 25th of March was New Year's day; so that the 16th day of November, 1739, was actually four months prior to the 17th day of March, 1739.

CHARTER

OF THE

CITY OF WILMINGTON

DELAWARE.

PART II.

Charter

OF THE

Act of April 13, 1883. 17 D. L., Chap. 207.

City of Wilmington,[a] Delaware,

As Amended to March 31, 1909.[1]

CITY LIMITS AND CORPORATE POWERS. ([b])

SECTION 1. The City of Wilmington shall be bounded ([c]) as follows, viz: Beginning at the Delaware river ([d]) at a point one thousand (1000) yards eastwardly from a stone set in the middle of the westerly bank of said river, in a line with the northerly side of Thirteenth street extended; thence by a line form- City limits.

1. Act of March 25, 1907. 24 D. L., 355, continues and re-establishes all the Statutes of the State of Delaware relating to the City of Wilmington, Delaware, not inconsistent with said Act.

ing an extension of said street without any change of course thereof to the easterly side of the Brandywine creek; thence along the same about one and a quarter miles to the old ford above the head of tide-water, and continuing along said side of said creek about thirty-three hundred (3300) feet, or until it reaches a point sixty-nine hundred and sixty-eight (6968) feet (measured at right angles) from the northerly side of Front street extended westwardly; thence north fifty-eight degrees west, and parallel with Front street to a line intersecting Front street at right angles at a distance of twenty-three hundred and thirty (2330) feet westerly from the center of Broome street; thence along said line south thirty-two degrees west and parallel with Market street sixty-nine hundred and sixty-eight (6968) feet to the northerly side of Front street extended, twenty-three hundred and thirty (2330) feet westerly from the center of Broome street; thence continuing the same course over Front street to a point sixteen hundred and ninety (1690) feet from the southerly side thereof; thence south fifty-eight degrees east and parallel with Front street to the northerly side of the Christiana turnpike road; thence by a line running southerly and at right angles to said turnpike to a marked stone set in the bank at the southerly side of Christiana river; thence easterly parallel with Front street to the Delaware river aforesaid to a point therein one thousand yards from a marked stone set in the middle of the western bank of said river, and thence thereby northerly to the place of beginning. Extended as follows, viz: By a line beginning at a stone at the westerly side of the Brandywine creek at the point where the northerly boundary line intersects the same; thence easterly by a line running perpendicularly to and crossing the Wilmington and Great Valley turnpike road at right angles to a point intersected by a line running perpendicularly to the Philadelphia turnpike road; thence by said last mentioned perpendicular line southeasterly to a stone in the middle of said Philadelphia turnpike road about ninety feet northeasterly from Price's run; thence southeasterly and parallel to Vandever avenue to the northerly side of the Philadelphia, Wilmington and Baltimore railroad; thence by a line southeasterly and parallel to Thirteenth street to its intersection in the

Extension of boundaries. Act of Feb. 24, 1869. 13 D. L., 451.

river Delaware with the northerly extension of the present water line or front of said city, and thence thereby southerly to its intersection with the northerly side of Thirteenth street. And further extended as follows, namely: By a line beginning at a point where the main roadway or tracks of the Philadelphia, Wilmington and Baltimore Railroad Company intersects the southerly city line; thence southwesterly along the center of said roadway of the said Philadelphia, Wilmington and Baltimore Railroad Company to line of lands of Henry Latimer; thence northwesterly along the line of said lands to a point where the said line extended crosses the center of the Wilmington and Newport turnpike road; and thence in a straight line northwesterly to the corner stone which marks the southwesterly boundary of the city of Wilmington, at the intersection of Beach and Union streets.

Extension of boundaries. Act of April 7, 1881. 16 D. L., 6.7.

(*a*) An interesting account of the rights, powers, duties and liabilities of the City of Wilmington is contained in the case below mentioned. A few of the things said by the Court are as follows:

Saulsbury, Ch.: "The City of Wilmington is a public corporation. It is a municipal corporation, which is, as we have seen, an incorporation by the authority of the State, of the inhabitants of a particular place or district, and authorizes them, in their corporate capacity, to exercise subordinate specified powers of legislation and regulation with respect to their local and internal concerns." (90)

And speaking of its charter, and powers in general, he says:

"Being the mere creature of the law, it possesses only those properties which the Charter of its creation confers upon it, either expressly, or as incidental to its very existence." (88)

"Its Charter, or act of right to incorporation, is in no sense a contract with the State" (91), and

"The City of Wilmington has no vested rights as against the State * * *"

Coyle vs. McIntire, 7 Houst. 44 at 92. (yr. 1884)

Mayor and Council of Wil. vs. Ewing, 2 Penn. 66 at 99. (yr. 1899)

(See paragraph 19 of this Section.)

(*b*) In speaking of the city's corporate limits, &c., the Court said, specifically:

Saulsbury, Ch.: The Legislature "may circumscribe or extend the limits of the corporation. It may divide the city into two, four or more cities, and give to each a separate and independent organization * * " (98), and generally.

The Legislature "may enlarge or diminish its territorial extent or its functions, * * or destroy its very existence * * *."

Coyle vs. McIntire, 7 Houst. 44 at 92. (yr. 1884)

(*c*) The city limits are marked and embraced by natural boundaries, and courses and distances. If there be any discrepancy the law is as follows:

Spruance, J.: "Where a deed calls for natural and known boundaries which are inconsistent with the description given in the deed by courses and distances, such natural and known boundaries control the boundaries by courses and distances. But, if, on

the contrary, the deed describes the land by courses and distances, and not by natural or known boundaries, the description by courses and distances is to be adopted."

Nevin vs. Disharoon, 6 Penn. 278 at 281. (yr. 1907)
Quillen vs. Betts, 1 Penn. 53 at 59-60. (yr. 1897)
Hunter vs. Lank, 1 Har. 10. (yr. 1832)
Nivin vs. Stevens, 5 Har. 272 at 280-1. (yr. 1850)

(*d*) One of the boundary lines, as fixed by the Legislature, carries the city limits 3000 feet into the Delaware River. Our State claims, and our House of Representatives declared, "that the jurisdiction and sovereignty of this State extends over the * * river Delaware to low water mark on the Jersey shore."

State vs. Morris, 1 Har. 326 at 328. (yr. 1835)

A compact, or agreement, between the two States of New Jersey and Delaware, was drawn up and agreed to April 23, 1907, whereby, for fishery rights and the service of criminal process, the entire river, to low water mark, was treated as common property. The property rights, and claim of the States as to the land under the river were left untouched. (23 D. L. pp. 12 and 17 and appendix p. 2; 24 D. L. p. 272.)

Extension of boundaries. Act of April 10, 1885. 17 D. L., 889.

[Further extended (*a*) as follows, namely: By a line beginning at the point where the southerly side of Front street intersects the westerly boundary of the city, thence north 58° west, two thousand one hundred and ninety-seven (2197) feet more or less along said southerly side of Front street extended to a point where the easterly side of Greenhill avenue intersects the said side of Front street, extended; thence north 32° east, along said side of said Greenhill avenue and parallel to Union street, three thousand and eight hundred and twenty-eight (3828) feet one (1) inch more or less, to the southerly side of Twelfth street, extended; thence south 58° east, along said side of Twelfth street, extended, two thousand one hundred and ninety-seven (2197) feet to the point where the said side of Twelfth street intersects the westerly boundary line of the city; and thence southerly along said westerly boundary line of the city, three thousand eight hundred and twenty-eight (3828) feet, to the point where the said southerly side of Front street intersects the said westerly boundary line of the city aforesaid. All that portion of the annexed territory lying between the northerly side of Front street and the centre of Sixth street shall be included in, and form a part of, the Tenth ward, and be portions of the *twenty-fourth and twenty-fifth election districts,* (1) respectively, as they lay North or

1. Election districts have been changed by subsequent legislation.

South of Second street. All that portion of the annexed territory included between the centre of Sixth and Ninth streets shall form a portion of the Fifth ward and be a part of the *twelfth election district.*(1) All the rest of the annexed territory shall form a part of the Seventh ward and be included in the *eighteenth election district.*(1)

(*a*) See Sec. 1, paragraph 1, "b" and "c."

Corporate powers.

Within the limits of the territory by this act included within and made part of the City of Wilmington, the Mayor and Council of Wilmington shall be and is hereby vested with all the powers, rights, privileges and immunities which by law appertain and belong to it as a municipal corporation, and all the laws or ordinances and regulations in force within the limits of the City of Wilmington, as heretofore existing, not modified or repealed by any of the provisions of this act, or which are not locally inapplicable, shall be extended (*a*) and applied to the territory comprised within the limits set forth in this act.

(*a*) This provision expressly extends to the new territory, "all the laws or ordinances and regulations in force in the city" at the time of such extension, &c. The principles of the common law, of course, are also applicable. For instance, if one lay out streets on a map (and record the same), of land adjoining a town, and the corporate limits are afterwards extended so as to take in the new land, thus dedicated, it belongs to the town, and condemnation proceedings are not necessary.

"And where such lots are afterwards included in an old and adjoining town by extending the corporate limits thereof, no proceedings by the corporate authorities for the condemnation of any of said streets are necessary, they are already public streets by prior dedication." (syllabus)

Fulton vs. Dover, 6 Del. Ch. 1. (yr. 1886)

Obsolete.

* * * * * * * * * * *

Extension of boundaries. Act of May 15, 1891. 19 D. L., 436.

[Further extended (*a*) as follows, namely: Beginning at the southwesterly corner of Union street and Delaware avenue, and running thence northwesterly along the northwesterly side of Delaware avenue, extended, one hundred and eighty (180) feet more or less, to a point in line with the southwesterly side of Eighteenth street as laid out in the district known as the Highlands; thence northwesterly one thousand and ten (1010) feet more or less, to the intersection of the southerly

1. Election districts have been changed by subsequent legislation.

side of Eighteenth street and the westerly side of Rockford lane; thence northerly along the westerly side of said lane about two hundred (200) feet to the southerly side of Church lane or Nineteenth street; thence northwesterly along the southerly side of Church lane or Nineteenth street about twenty-five hundred and twenty-five (2525) feet to a point formed by the intersection of the southerly side of Church lane with the most westerly line of the Rockford Park extended southerly across said lane; thence north forty-one degrees and forty-two minutes east, crossing said lane and binding on lands of E. I. DuPont de Nemours & Company, eight hundred and forty feet and six-tenths (840.6) to a corner stone; thence easterly following the lines of Rockford Park and the park roadway until they intersect the line of the present boundary of the city of Wilmington upon the northerly side of the park roadway, as now laid out and determined; and thence southerly along the present city line to the point of beginning.

(*a*) See Sec. 1, paragraph 1, "b" and "c."

(*) Act of May 15, 1891. 19 D. L., 436.

Corporate powers.

Within the limits of the city of Wilmington extended by this act, (*) the Mayor and Council of Wilmington shall be vested with all power, rights, privileges and immunities which before this time belonged to them as a municipal corporation, and all the laws, ordinances and regulations in force within the former city limits, and not locally inapplicable, shall be extended (*a*) and applied to the new territory comprised within the boundaries as set forth in the first section of this act. *Provided*, That the park lands and the park roadway included within said boundaries shall be subject to the jurisdiction of the Park Commission in like manner as is by law provided with respect to lands now held and owned by the said city for park purposes.

Proviso as to park lands.

(*a*) See Sec. 1, paragraph 3, "a."

Obsolete.

* * * * * * * * * * *

Part of 7th Ward.

The new territory hereby added to the said city (excepting the park lands) shall be a part of the Seventh ward thereof. *Provided, however*, That all expense incurred in the surveying of said annexed territory for the purposes of establish-

Proviso as to expense in surveying.

ing grades and street lines upon the land through which streets or avenues shall be opened or extended shall be borne by the owners therein.]

[Further extended (*a*) as follows, namely: Beginning at a point in the centre of the Philadelphia and Wilmington turnpike road and also in the centre line of a new street or road called Eastlawn avenue, laid out through lands now or formerly of George W. Talley, deceased; thence by the centre line of said Eastlawn avenue, south thirty-three degrees east, four thousand six hundred and twenty-five (4625) feet passing through lands of said George W. Talley, deceased, and land of the Philadelphia, Wilmington and Baltimore Railroad Company, to the middle of Shellpot creek; thence down the middle thereof by its various courses to the present line of the City of Wilmington; thence northwesterly by said city line to a point where it intersects the centre line of the Concord turnpike road or Elliott avenue extended; thence by the centre line of said Concord turnpike road or Elliott avenue extended, north one-quarter of a degree west, five hundred and seventy (570) feet to the centre line of the Baltimore and Philadelphia railroad; thence northerly by the centre line of said railroad one thousand five hundred and ninety (1590) feet to a stake; thence south thirty-six degrees east, four thousand two hundred and fifty-seven (4257) feet to the centre of the Philadelphia and Wilmington turnpike road, and thence thereby southerly thirty (30) feet to the place of beginning.

Extension of boundaries. Act of April 14, 1893.

(*a*) See Sec. 1, paragraph 1, "b" and "c."

Within the limits of the City of Wilmington extended by this Act, (*) The Mayor and Council of Wilmington shall be vested with all power, rights, privileges and immunities which before this time belonged to them as a municipal corporation, and all the laws, ordinances and regulations in force within the former city limits, and not locally inapplicable, shall be extended (*a*) and applied to the new territory comprised within the boundaries as set forth in the first section of this Act.

(*) Act of April 14, 1893.

Corporate powers.

(*a*) See Sec. 1, paragraph 3, "a."

* * * * * * * * * * *

Obsolete.

Part of 9th Ward.

The new territory hereby added to the said City of Wilmington shall be a part and parcel of the Ninth ward thereof.]

Corporate powers.

Within the limits of the City of Wilmington, established by this Act, The Mayor and Council of Wilmington shall be vested with all power, rights, privileges and immunities which before this time belonged to them as a municipal corporation; all the laws, ordinances and regulations in force within the former city limits, not modified or repealed by the provisions of this Act and not locally inapplicable, shall be extended (*a*) and applied to the territory comprised within the boundaries set forth in this Act.

(*a*) See Sec. 1, paragraph 3, "a."

Extension of boundaries. Act of April 29, 1895. 20 D. L., 161.

[Further extended (*a*) as follows, namely: Beginning at a point where the northeasterly boundary line of the City of Wilmington intersects the northerly side of Wooddale avenue extended at right angles to Thirty-second street, as laid down on the city map; thence northeasterly along the northerly side of Wooddale avenue extended at right angles with Thirty-second street as aforesaid, twelve hundred and twenty (1220) feet to a point; thence southeasterly by a line measured at right angles to the first described line, crossing the Philadelphia and Wilmington turnpike road at a point about six hundred and thirty (630) feet east of the present city line at intersection of Market street and Eastlawn avenue, to a point where it intersects the present city line at or near the Philadelphia, Wilmington and Baltimore railroad; thence northwesterly along said present city line by its various courses to the place of beginning.

(*a*) See Sec. 1, paragraph 1, "b" and "c."

(*) Act of April 29, 1895. 20 D. L., 162.

Jurisdiction of city authorities extended to new territory.

Within the limits of the City of Wilmington, extended by this Act, (*) The Mayor and Council of Wilmington shall be vested with all power, rights, privileges and immunities which before this time belonged to them as a municipal corporation, and all the laws, ordinances and regulations in force within the former city limits, and not locally inapplicable, shall be ex-

tended (*a*) and applied to the new territory comprised within the boundaries as set forth in the first section of this Act.

(*a*) See Sec. 1, paragraph 3, "a."

The real estate by this Act (*) added to and included within the city limits, and all persons now or hereafter residing within said new boundaries, shall be subject to assessment for municipal taxes in the same manner and subject to the same rights, rules and restrictions as in other cases within the said city; *provided,* the real estate by this Act added to and included within the city limits and all persons now or hereafter residing within said new boundaries shall be subject to assessment for municipal taxes in the same manner and subject to the same rights, rules and restrictions as in other cases within the said city. (*a*) * * * * * * * * * * * *

(*) Act of April 29, 1895. 20 D. L., 162.

Assessment of taxes.

* * * * The new territory hereby added to the said City of Wilmington shall be a part and parcel of the Ninth Ward thereof, * * * * * * * * * * * * * * *]

(*a*) The part omittted in this provision related to taxation at a special rate, and different from the rate fixed for other property in the same class. The constitutional provision as to uniformity of taxation repealed it.

Spruance, J.: "Section 1 of Art. 8 of the Constitution provided that "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. * * The said provision of the Constitution was self-executing, and proprio vigore annulled the said act of 1897, which was inconsistent, and in direct conflict, with the said provision."

Monaghan vs. Lewis, 5 Penn. 218 at 224. (yr. 1905)

And when the Constitutional provision worked the repeal, Sec. 80 of the Charter (relating to taxation) at once became effective.

"It cannot be objected that the annulling of said act * * by the operation of the Constitution, would have left the territory covered by said act without provision for taxation, as there was then in force, a general law providing for the taxation of real estate in the City of Wilmington (City Charter, Sec. 80)" id. 224.

And as to the claim that the exemption was a vested right, &c., the Judge said:

"The exemption of real estate within certain bounds from taxation at a rate exceeding one-fourth of the regular rate, given by the act of 1897, was not a vested right, and was not founded upon contract, but was a pure gratuity which could be revoked by the Legislature at any time." id 223.

[Further extended (*a*) as follows, namely: Beginning at the intersection of the easterly side of Greenhill avenue with the southerly side of Twelfth street extended; thence northeast-

Extension of boundaries. Act of May 7, 1895. 20 D. L., 268.

erly to the northerly side of Kennett turnpike; thence along the northerly side of said Kennett turnpike to its intersection with the easterly side of Rising Sun lane, in Christiana hundred; thence northerly along said easterly side of Rising Sun lane, aforesaid, continued in a straight line to the middle of Brandywine creek; thence along the middle of Brandywine creek by the several courses thereof, to the point where said line intersects the present city line, which crosses said Brandywine creek at or near the mouth of Crooked run; thence along the present city line to the place of beginning.

(*a*) See Sec. 1, paragraph 1, "b" and "c."

Jurisdiction of city authorities extended to new territory.

(*) Act of May 7, 1895, 20 D. L., 268.

Within the limits of the City of Wilmington extended by this Act, (*) The Mayor and Council of Wilmington shall be vested with all power, rights, privileges and immunities which before this time belonged to them as a municipal corporation, and all the laws, ordinances and regulations in force within the former city limits, and not locally inapplicable, shall be extended (*a*) and applied to the new territory comprised within the boundaries as set forth in the first section of this Act.

(*a*) See Sec. 1, paragraph 3, "a."

New territory subject to municipal taxation.

(†) Act of May 7, 1895, 20 D. L., 269.

The real estate by this Act (†) added to and included within the city limits, and all persons residing now or hereafter within said new boundaries, shall be subject to assessment for municipal taxes in the same manner and subject to the same rights, rules and restrictions as in other cases within the said city; (*a*) * * *

[Further extended (a) as follows, namely: Beginning at the point where the southerly side of Lancaster avenue intersects with the easterly side of Greenhill avenue; thence north 58 degrees west, ten hundred and twenty (1020) feet more or less along said southerly side of Lancaster avenue extended to a point where the westerly side of Cleveland avenue intersects the said southerly side of Lancaster avenue extended; thence north 32 degrees east, along said side of Cleveland avenue and parallel to Greenhill avenue, nineteen hundred and ten (1910) feet more or less to the southerly side of Seventh street extended; thence south 58 degrees east, along said side of Seventh street extended, nine hundred and sixty (960) feet more or less to the point where said side of Seventh street extended intersects the westerly side of Greenhill avenue; thence north 32 degrees east along the westerly side of Greenhill avenue, two thousand and four hundred (2400) feet more or less to the northerly side of the Kennett turnpike road; thence thereby easterly sixty (60) feet more or less to the easterly side of Greenhill avenue; and thence south 32 degrees west, along said easterly side of Greenhill avenue, four thousand and three hundred (4300) feet more or less to the northerly side of Lancaster avenue and place of beginning.

Extension of boundaries. Act of May 25, 1898, 21 D. L., 241.

(a) See Sec. 1, paragraph 1, "b" and "c."

Within the limits of the City of Wilmington extended by this Act, (*) The Mayor and Council of Wilmington shall be vested with all power, rights and privileges and immunities which before this time belonged to them as a municipal corporation, and all the laws, ordinances and regulations in force within the former city limits and not locally inapplicable, shall be extended (a) and applied to the new territory comprised within the boundaries as set forth in the first section of this Act.

City control and government extended to new territory.

(*) Act of May 25, 1898, 21 D. L., 241.

(a) See Sec. 1, paragraph 3, "a."

The real estate by this Act (†) added to and included within the city limits and all persons now or hereafter residing within said boundaries shall be subject to assessment for municipal taxes in the same manner and subject to the same rights, rules and restrictions as in other cases within said city.

Subject to city taxation.

(†) Act of May 25, 1898, 21 D. L., 242.

Division of new territory among wards.

All that portion of the new territory hereby added to the said city lying south of Sixth street shall be a part of the Twelfth ward thereof, all that portion lying between Sixth street and Ninth street shall be a part of the Fifth ward thereof, and all that portion lying north of Ninth street shall be a part of the Seventh ward thereof.] (a)

(a) The above constitutes the present corporate limits of "The Mayor and Council of Wilmington." A slight repetition showing to what extent it is merely the creature of the Legislature, may here be given:

Spruance, J.: "The Mayor and Council of Wilmington is merely an agency instituted by the State for the purpose of carrying out in detail the objects of government. It is essentially a revocable agency. It has no vested (interest in) any of its powers or franchises. Its charter * * * is in no sense a contract with the State. It is subject to the control of the Legislature, who may enlarge or diminish its territorial extent or its functions, and may change or modify its internal arrangement or destroy its very existence at discretion."

Mayor and Council of Wil. vs. Ewing, 2 Penn. 66 at 99. (yr. 1899)

Corporate name and authority.

SEC. 2. The style and name of the corporation of the said city shall be "The Mayor and Council of Wilmington;" (a) and by that name they shall be and are hereby made able and capable in law to have, take, purchase, receive, possess, enjoy and retain, (b) to them and their successors, lands, tenements, hereditaments, goods, chattels and effects, of what kind, nature or quality soever, and the same to sell, grant, demise, alien or dispose of, to sue and be sued, (c) implead and be impleaded, answer and be answered, defend and be defended, in all courts of law and equity or any other place whatsoever, and also to make, have and use a common seal, and the same to break, alter and renew at their pleasure, and generally to have all the privileges and franchises incident to a corporation or body politic. (d)

(a) *Saulsbury, Ch.*: "The style and name of the corporation is "The Mayor and Council of Wilmington," and it is declared by its Charter, that, by that name, they shall be, and are hereby made, able and capable in law, to have, take, purchase," &c.

Coyle vs. McIntire, 7 Houst. 44 at 90. (yr. 1884)

"The Legislature can change the name and style of the corporation, and even of the city itself, without the consent, and even against the will of the inhabitants," &c. id. p. 98.

(b) "The uses for which the corporation may acquire and hold property must, necessarily, we think, be public uses," &c. id. p. 94.

"The municipality may hold property, in which all the inhabitants of a State, or of a county, may be said to have an interest in some re-

spect, but not as owners or proprietors. And it may also hold property in which the inhabitants of the municipality alone may properly be said to have an interest. Both classes of property are public. The one as to the people of the whole State or county, the other more particularly as to the inhabitants of the municipality. * * * Although the property held for the municipality is in fact public as common to all the inhabitants of a city, it nevertheless may justly be said to be private property, as being such property as is exempt from being taken or applied to any other public use by the State, or by authority of the State, without compensation being made.'' id. p. 95-96.

(*c*) In a suit brought by the city, it was held that the City Treasurer could not make an affidavit of demand.

Mayor and Council of Wil. vs. Hedges & McClung, 5 Har. 421 at 422. (yr. 1853)

(It would seem that it is otherwise, now, by Sec. 4, p. 790, Rev. Code.)

The city, like an individual, may sue and be sued, but the Legislature may exempt it from liability for damages arising from injuries received from defective conditions of sidewalks, where the same were not caused by the city or any of its authorized agents. In such cases the Court said:

Spruance, J.: ''The plaintiffs have no vested right to sue the city,'' and the liability ''implied by law from the duty imposed by law,'' may be removed.

Mayor and Council of Wil. vs. Ewing, 2 Penn. 66 at 105. (yr. 1899)

(See Secs. 119-120 and 121 of the Charter.)

And the city is not subject to garnishment.

Boyce, J.: ''We say to you that persons holding property or money * * under public authority, such as * * public officers and municipal corporations, are not ordinarily subject to garnishment.''

Rossell vs. Bartram, 1 Penn. 242 at 244. (yr. 1898)

The Court referring to this case, in a later case, said:

Lore, C. J.: ''Garnishment will not lie against one holding as city agent, money due a municipal commission appointed in its behalf.''

Farmers Bank vs. Ball, St. Treas. 2 Penn. 374 at 377. (yr. 1900)

In the above case Rossell had been paid money by the city for a commission. The question was, did he hold the money as agent for the city, or as agent for the commission. If for the city he could not be garnisheed.

Nor can the city be sued, or its property be affected by a mechanic's lien. Execution process will not lie against a city.

Lore, C. J.: ''This is not the ascertainment of the amount of the liability on the part of a municipal corporation for its own debt, but it is the special condemnation of the particular piece of property in execution, a proceeding in rem as it were. It is sought here to extend the remedy to municipal property. This the courts will not do, unless it is expressly provided for in the statute.''

Emory & Co. vs. Com. of Laurel, 3 Penn. 67 at 69. (yr. 1900)

Quinby & Co. vs. Wilmington, 5 Houst. 26 at 31. (yr. 1875)

In the above cases the town of Laurel and the city of Wilmington had work done on its water works and city mill, respectively. The persons who furnished materials to the contractors endeavored to collect their money by entering a mechanic's lien against the buildings. The Court held it could not be done.

The city cannot be sued for salary by one not in possession of office (there being a de facto incumbent) until he first, at least, establish his right to the office by quo warranto proceedings.

Lee vs. Wilmington, 1 Marv. 65. (yr. 1894) (See Sec. 108 of the Charter.)

The phrase, "to sue and be sued," does not give the city the right to bring a criminal prosecution in its own name.

Dover vs. Tawressey, 2 Marv. 285 at 288. (yr. 1896). (See Sec. 15, paragraph 4, "a.")

(*d*) This section (Section 2), is practically the life of the corporation.

Saulsbury, Ch.: "It is because it is a body politic, and has a legal entity and name and a seal by which it can act," * * and "the capacity to contract and be contracted with, to sue and be sued, to hold and dispose of property. It is because it has this capacity and these powers that it can acquire rights and incur responsibilities."

Coyle vs. McIntire, 7 Houst. 44 at 92. (yr. 1884)

CITY OFFICERS.

City officers. Act of April 19, 1889. 18 D. L., 884.

SEC. 3. The city officers shall be a Mayor, a Council to be composed of [one member] from each ward of said city, a President of said Council who shall be *ex-officio* a member and the presiding officer of said Council, a Treasurer, an Auditor, a Solicitor, a High Constable,[1] two Assessors who shall also be Collectors, * * * * * * * * * * * and such other officers as the Council by ordinance shall create and appoint. (*a*)

(*a*) *The Court*: "Public offices in this country are created solely for the public good, and not for private emolument or benefit, and the tenure of them can in no case be considered or treated as the private property of the incumbent to be bargained for and sold as such." Any deal made concerning an office is void.

Stroud vs. Smith, 4 Houst. 448 at 450. (yr. 1872)

These and other municipal offices can be abolished, any time, at the will of the Legislature.

Saulsbury, Ch.: "All the agencies of the city, that is of the corporators, can be abolished or changed, at the will of the Legislature, and even their functions terminated and assigned to other and different agencies."

Coyle vs. McIntire, 7 Houst. 44 at 98. (yr. 1884)

State ex rel McVey vs. Burris, 4 Penn. 3, at 4 and 5. (yr. 1901)

Advisory Board. How formed. Act of April 5, 1909. 25 D. L., 307.

[There shall also be an Advisory Board consisting of the Presidents of all the following Departments of the city, viz: Water Department, Street and Sewer Department, Park Department, Police Commission, Board of Health, and including also the President of the Board of Public Education in Wilmington, and of such two members of the Council as shall be chosen by the Council,—both of whom shall not be of the same

1. The duties of the High Constable are now performed by the Chief of Police. See Police Commission Act.

political party. All elective and appointive officers of the city shall be eligible to re-election or re-appointment respectively as the case may be.] Who shall be eligible.

SEC. 4. No person shall be eligible to any office who is not, at his election, a citizen of the State and a resident (*a*) of the city. The Mayor must have resided in the city two years next before his election. A member of Council must also have resided in the city two years before his election, and must additionally be, at the time of his election, a resident in the ward in which he is elected and a freeholder in the city. Eligibility. Residence.

(*a*) It is often a difficult matter to determine whether a person is, or is not, a "resident."

The Court: One "cannot have two homes at the same time. When he acquires another, he loses that home which he has exchanged for the new one. * * Domicil, or residence, in a legal sense, is determined by the intention of the party."

State vs. Frest, 4 Har. 558. (yr. 1844)

No ordained clergyman, or ordained minister of the gospel of any denomination, shall be eligible to any office established under or by virtue of this Act. (*a*) Clergymen ineligible.

(*a*) Our State Constitutions, up until 1897, contained a provision practically similar to the above. The Constitution of 1897 omits all reference to it. About 1840, one John Hagany, a minister, claimed he was elected City Treasurer of Wilmington. The question was, whether the office of "City Treasurer" was a "civil office in this State." The Court held it was not; in other words it held the constitutional provision did not apply to municipal offices. The reason given for the exclusion, from office, of ministers of the gospel, is as follows:

Harrington, Justice.: "The principle which this clause of the constitution is supposed to announce is, that ordained clergymen shall not be employed in administering the government. It doubtless grew out of a wise determination to keep the affairs of the church separate from affairs of State, and by excluding from public office ministers of the gospel, to exclude also, any improper influence from that source on public affairs."

State vs. Wil. City Council, 3 Har. 294 at 302. (yr. 1840)

(See Sec. 32, note "b" of the Charter.)

SEC. 5. Every officer of said city, before he enters upon the duties of his office, shall take an oath, or affirmation, to support the Constitution of the United States, and the Constitution of the State of Delaware, and that he will perform the duties of the office to which he has been elected, or appointed. Oath of office.

Act of April 19, 1889. 18 D. L., 884. By whom administered.

with fidelity. (a) [Such oath or affirmation may be administered by the City Judge, or by any officer authorized under the laws of this State to administer oaths or affirmations.]

(a) This oath is similar to the one contained in Art. XIV of the Constitution of our State, except that the constitutional oath concludes as follows: "According to the best of my ability."

In the case of State vs. Matlack et al, 5 Penn, 402, it was contended that the constitutional oath applied to all "public officers." The Court, without deciding the matter, admitted, in evidence, the Primary election law oath, 420-422. The oath in Sec. 5, above, is the oath that should be administered to all municipal officers. The law is briefly stated, as follows:

Harrington, Justice.: "the Constitution nowhere descends to notice a corporation officer. Such an office forms no part of the system of government," &c.

State vs. Wil. City Council, 3 Har. 294 at 302. (yr. 1840)

Nicholson, Ch.: "It cannot be doubted, as a general proposition of law applying to the construction of statutory and constitutional provisions alike, that the words "offices" or "officers" taken by themselves, in a statute or Constitution, mean State or county "offices" or "officers" only and cannot be construed to mean the offices or officers of municipal or other corporations, unless there be language expressly or by necessary implication extending their meaning to corporation officers."

State vs. Churchman, 3 Penn. 361 at 365. (yr. 1902)

See the case of Huey vs. Richardson, 2 Har. 206. (yr. 1837)

MAYOR.

Act of March 25, 1907. 24 D. L., 344. Act of March 25, 1907. 24 D. L., 356. Mayor's election.

Term

Salary

Sec. 6. [At the city election to be held on the first Saturday in June, A. D. 1907, and on the same day in every [second][1] (a) year thereafter, the qualified voters of the City of Wilmington shall vote for a Mayor who shall be elected by a plurality of all the votes cast in the several election districts. The Mayor shall hold office for the term of two years commencing on the first day of July next succeeding his election. The salary of the Mayor shall be two thousand dollars per annum, payable in the same manner as other city officials are paid.]

(a) The Court in Banc, on June 7, 1910, decided that the Act of March 25, 1907, 24 Del. Laws, p. 356, was void, because the aye and nay vote did not appear upon the Journals of the respective Houses of the Legislature.

(The note, referring to the appendix, is self-explanatory.)

Rash vs. Allen (yr. 1909) App. Dock. 317 and 387.

Ross vs. Allmond (yr. 1909) App. Dock. 318 and 388.

(A dissenting opinion, on the above point, was rendered in the above cases.)

The Mayor, under the Charter of 1832, was appointed by "The Council."

Mayor and Council of Wil. vs. Horn, 2 Har. 190. (yr. 1837)

1. See memorandum in the appendix, page 3, note 1, this volume.

SEC. 7. The Mayor is hereby constituted a conservator of the peace within the said city, and it shall be his duty to take care to have the laws and ordinances of the said city faithfully executed. [For the purpose of enforcing the faithful execution of said laws and ordinances, and of obtaining any information concerning matters affecting the municipality, the Mayor shall have power and authority, in any inquiry or investigation which he may institute, to compel the attendance of witnesses and the production of necessary books and papers, at any time and place within the city he may designate. He may issue subpoenas and attachments, signed by himself, to compel the attendance of such witnesses and the production of any and all such books and papers, which such subpoenas and attachments shall be served and executed by any police officer of the city. If any person so summoned as a witness shall refuse to testify to any facts within his knowledge, or to produce the books in his custody or possession, or under his control, required in such inquiry or investigation, the Mayor shall have power to commit such witness for contempt. All witnesses in any such inquiry or investigation shall be examined under oath to be administered by the Mayor, and any false answer or statement made under oath by any such witness at such inquiry or investigation shall be deemed perjury, and shall be punished accordingly. The expenses of any such inquiry or investigation shall be paid by The Council upon bills presented to such body, approved as correct by the Mayor.] He shall have the custody of the seal of the corporation and the right of affixing the same. (*a*)

Duties.

Act of March 25, 1907, 24 D. L., 344.

Powers.

Custody of seal.

(*a*) The Mayor is simply the custodian of the seal of the corporation. If "The Council," or a co-ordinate branch of the municipality make a contract, it is the Mayor's duty to sign the contract, and affix the corporate seal to it, no matter what he may think of it.

Lore, C. J.: "As the ordinance vests in "The Council" the exclusive right to * * award these contracts, and the function of the Mayor in signing and affixing the seal of the city is merely ministerial, we think he ought to do it. * * The Mayor is not to undertake to decide between parties what is legal or illegal."

McCormick vs. Fisher, 5 Penn. 273 at 276. (yr. 1903)

In the above case "The Council" made a contract for the collection and removal of garbage. Mayor Fisher refused to sign it, and the Court ordered him to do it.

Shortly after the above decision, the Water Department made a contract with the United States Sand Filtration Company, and the Mayor re-

fusing to sign it, he was mandamused, and ordered by the Court to do so. (the case is unreported.)

United States Sand Filtration vs. Bird (yr. 1904) App. Dock. p. 225.

May take acknowledgments, etc.

Fee.

SEC. 8. The Mayor shall have power to take and certify under his hand and seal of office, the acknowledgment of deeds, and letters of attorney, and the private examination of married women, parties to such deeds, in like manner as a judge or notary public may do; for which service he shall receive a fee of seventy-five cents, and no more, whether there be one or more parties to the deed.

Solemnizing marriages.

SEC. 9. The Mayor shall also have authority within the city, in like manner as a preacher of the gospel, to solemnize marriages, (*a*) and shall keep a like register, and certify an extract therefrom to the Recorder of New Castle County in like manner, and shall receive the same fee, and be subject to the same penalties touching the solemnization of marriage, and keeping a registry thereof, as is a preacher of the gospel under the existing, or any subsequent laws of this State.

(*a*) In case of void marriages by the Mayor, the only remedy is the Legislature.

The Court: "The Legislature has the power to declare what shall be valid marriages. They can annul marriages already existing—a fortiori, they can render valid marriages, which, when they took place were against law. They can exercise the power of marriage, or delegate it to others. The whole subject is one of legislative regulation."

Moore vs. Whitaker, 2 Har. 50 at 51. (yr. 1836)

(See p. 3, note 2, Appendix.)

In absence or disability of Mayor, President of Council shall act.

SEC. 10. In case of the temporary absence of the Mayor from the city, or temporary disability to perform the functions of his office, the President of Council shall, during the continuance of such absence or disability, assume and discharge the duties of Mayor *pro tempore*, with all the powers and authorities of the Mayor for the time being. In case of the inability of the President of Council to act as Mayor *pro tempore*, Council shall make appointment of a Mayor *pro tempore* from the members of Council to act during such temporary absence, or inability to act, of the said Mayor.

Appointments made by Council to fill vacancies.

SEC. 11. In case of the death, removal from the city, resignation, or refusal to act, of the Mayor or any other elective officer of said city, or in case of the removal[1] of any member of Council out of the ward for which he was elected, the Council shall make temporary appointments to supply such vacancies until the same can be filled by election under the provisions of this Act. Such election shall be for the unexpired term of such officer, and shall take place at the first city election occurring more than nine days after the commencement of such vacancy, unless such vacancy shall occur in the last year of the term of said officer, in which case the temporary appointment of Council shall be for the unexpired term of said officer, and until his successor shall be duly elected and qualified. The provisions of this section shall apply to any elective office to which a person who has been elected thereto shall be found ineligible, or shall fail to give bond for the faithful performance of the duties of his office (when such bond is required by law) before the time fixed for entering upon the duties of his office. (*a*)

Elections. When held.

(*a*) The phrase "before the time fixed for entering upon the duties of his office," in reference to the giving of bonds, is the language almost invariably used in connection with our municipal offices.

The intent seems to be, that where a bond is required, it must be given before the time fixed for entering upon the duties of the office. In the absence of such an intent the law seems to be as follows:

"Provisions in statutes for the taking of official bonds are directory only, and not conditions precedent to the exercise of the office, unless expressed to be such."

Pickering vs. Day, 2 Del. Ch. 333 at 334. (syllabus) (yr. 1866)

(The above phrase is construed in the above case on pp. 379-385.)

Seal.

SEC. 12. The seal now used as the seal of office of the said Mayor shall continue to be used as such until the same shall be changed, altered, or renewed by the Council.

Removal of Mayor.

SEC. 13. The Mayor may be removed by a vote of two-thirds of the whole Council after a fair and impartial trial upon which he shall by such trial be found guilty of the charge

1. A member moving out of the ward from which he was elected shall thereby lose his office and the City Council shall fill the vacancy. See Act April 6, 1893, 19 D. L. 989, Sec. 12.

or charges preferred against him. The reasons for the removal shall be entered on the journal. (a)

(a) Removal under the above section has reference to wrong doing. Liability is not supposed to attach where one acts in good faith and according to one's best judgment, especially when concerned in planning or doing something for the improvement or good of the city.

Comegys, J.: "The City of Wilmington can by itself (it being a mere public corporation or municipal body) do nothing towards deciding upon or making any improvement whatever. It acts, however, through agents in making its decisions as to action. It is they who represent the city, exercising its public functions through their own discretionary judgment. They are not liable for any error of judgment," &c.

Harrigan vs. Wilmington, 8 Houst. 140 at 143. (yr. 1888)
Huey vs. Richardson, 2 Har. 206. (yr. 1837)

Act of March 25, 1907. 24 D. L., 347.

Mayor's appointments to be confirmed by Council.

[All appointments to office which the Mayor, by law now or hereafter may have power to make, shall be subject to confirmation by The Council, by a majority vote of all the members elected thereto. Appointments not acted upon by The Council within ten days after the same are made and sent to The Council shall be valid without confirmation. And if The Council should act adversely upon two successive appointments to any office, the Mayor shall have power to make the third appointment in accordance with existing law.]

MUNICIPAL COURT.

Municipal Court.

Governor to appoint City Judge.

Eligibility.

Term.

Oath of office.

Act of March 31, 1887. 18 D. L. 344.

Sec. 14. From and after the first day of June, A. D. 1883, there shall be and is hereby established within the said city a court of record and of law which shall be known by the name, style and title of "The Municipal Court for the City of Wilmington," (a) and it shall be the duty of the Governor, before the first day of June aforesaid, to appoint (b) and commission a City Judge, (c) who shall have power and authority to hold and keep said court of record. No person shall be eligible to the office of City Judge unless he be a man learned in the law, and of at least seven years standing as a practising attorney in the Superior Court of this State. The City Judge shall hold his office for the term of twelve years, unless sooner removed by the General Assembly. (d) Upon his appointment he shall take the oath of office prescribed by Article VIII of the Constitution of this State. [The terms of said court shall commence on the first Monday of each and every month, and the sessions

of the said court during any term may be adjourned or otherwise continued from time to time as public business may require. *Provided, nevertheless*, and it is hereby expressly made the duty of the City Judge to so regulate the said court, that there shall be sessions of the same on every Monday, Wednesday and Saturday evenings throughout the year after the hour of seven o'clock.] It shall be the duty of the Council of said city, and the same is hereby authorized and directed, immediately after the passage of this act, to provide some suitable place in the city hall, or such other place as the Council shall provide, for the holding of said Municipal Court, and all expenses of said court for books, records, writs, and other papers necessary for the said court shall be paid by the Council upon a bill presented to the same, verified by the affidavit of the City Judge, and shall be paid in the same manner as other bills against said city are now paid. * * * * *

Terms of Court.

(*a*) *Wolcott, Ch.*: "By Section 14 of the charter a municipal court is created," &c.

Mayor and Council of Wil. vs. Vandegrift, 1 Marv. 5 at 13. (yr. 1893)

Nicholson, Ch.: "The Municipal Court is a statutory tribunal, provided for in the charter or organic act of the City of Wilmington, being Chap. 207, Vol. 17, Del. Laws, * * passed April 19, 1883."

State vs. Churchman, 3 Penn. 361 at 362. (yr. 1902)

Spruance, J.: "The Municipal Court for the City of Wilmington was established by an act of the General Assembly, passed April 13, 1883, being Chapter 207 of Volume 17, Laws of Delaware. The said Court was created pursuant to Sections 1 and 15 of Article 6 of the Constitution of 1831," &c.

Zuchowski vs. State, 3 Penn. 339 at 340. (yr. 1901)

The present Municipal Court is practically the same as the old "Mayor's Court."

(The Mayor's Court consisted of "the Mayor, Alderman, and President of the City Council.") 8 D. L., p. 102, Sec. 17.

Nicholson, Ch.: "In fact, the only important differences seem to be the name of the Court, the title of its Judge, and the method of his appointment. It is the Municipal Court for the City of Wilmington, instead of the Mayor's Court," &c.

State vs. Churchman, 3 Penn. 361 at 370. (yr. 1902)

The Municipal Court was established in 1883, the Mayor's Court in 1832, but both under "Sections 1 and 15 of Article 6 of the Constitution of 1831."

Harrington, Justice: "The origin of the Mayor's Court, under that name * * is admitted to be under an Act of Assembly, entitled, "A supplement to the act entitled an act to alter and re-establish the charter of the borough of Wilmington," passed at Dover, Jan. 18, 1832' (8 Vol. 97.")

Gray vs. The State of Delaware, 2 Har. 76 at 88-89. (yr. 1836)
State vs. Churchman, 3 Penn. 361 at 366. (yr. 1902)

And this Mayor's Court simply received by the Act of 1832 an "enlargement" of judicial powers, which had been vested in the corporation of Wilmington from colonial days.

Harrington, Justice: "though it should be conceded that the Court, as a Mayor's Court, under its enlarged jurisdiction and new name, is established by the Act of 1832, it is only by the increase of powers of officers existing before the constitution * * which from time immemorial were, as to all matters arising within the corporation limits, justices of the peace." id 93.

"The corporation of Wilmington enjoyed by patent dated in 1739 the right to elect two burgesses and six assistants, * * * which burgesses, by the same patent, and also by the Act of 1772, were invested with all the judicial powers, within the corporation limits, of justices of the peace within the county." id 93.

(*b*) *Grubb, J.*: "Under and by virtue of this constitutional provision contained in Section 15, Article 6, of the late Constitution, the statute of 1883, Chap. 207, Vol. 17, Laws of Delaware, and the acts amendatory thereof, created the said Municipal Court for the City of Wilmington, authorized the appointment of its Judge by the Governor," &c.

Forbes & Hartman vs. State, 2 Penn. 197 at 199. (yr. 1899)

The Governor appoints under the Act of 1883; the Council appointed under the Act of 1832, viz the Mayor, the Alderman and President of Council.

Nicholson, Ch.: "It is the Municipal Court for the City of Wilmington, instead of the Mayor's Court; its Judge is called the City Judge and he must be appointed by the Governor, instead of being chosen by the city."

State vs. Churchman, 3 Penn. 361 at 370. (yr. 1902)

The appointment of the City Judge of the Municipal Court does not have to be confirmed by the Senate.

Nicholson, Ch.: "It is considered by this Court that the appointment of the plaintiff to be City Judge of the Municipal Court for the City of Wilmington was a valid appointment without confirmation by the Senate," &c.

State vs. Churchman, 3 Penn. 361 at 376. (yr. 1902)

(*c*) The Judge of the Municipal Court may be a public official, but he is a municipal and not a State officer.

Layton, Justice: "Corporate officers are not State officers, otherwise by express provision of the Constitution."

State vs. Wilmington City Council, 3 Har. 294 at 310. (yr. 1840)

Harrington, Justice: "For these are not officers, either of the State or county, but of the corporation," &c.

Gray vs. The State of Delaware, 2 Har. 76 at 93. (yr. 1836)

Nicholson, Ch.: "In view of all the considerations adduced, we are brought to the conclusion that the word "officers" in the appointing clause of the Constitution of 1897 applies to State and county officers only, and not to the officers of a municipal corporation, and also that the City Judge of the Municipal Court for the City of Wilmington is an officer of a municipal corporation," &c.

State vs. Churchman, 3 Penn. 361 at 373. (yr. 1902)
Mayor and Counc. of Wil. vs. Vandegrift, 1 Marv. 5 at 18. (yr. 1893)

(*d*) *Nicholson, Ch.*: "His term of office was fixed at twelve years unless sooner removed by the General Assembly," &c.

State vs. Churchman, 3 Penn. 361 at 363. (yr. 1902)

[That the City Judge of the Municipal Court shall have an assistant, who shall be known as the Deputy City Judge, who shall receive such compensation as the City Council may hereafter provide for. The duties of the said Deputy City Judge shall be to hold and keep the Municipal Court when requested by the City Judge to do so, and in general to assist the City Judge in all legal matters pertaining to his duty. Act of March 1, 1901. 22 D. L., 364.

The Associate Judge of the Superior Court, resident in New Castle County, shall on or before the first day of March, A. D. one thousand nine hundred and one, and every four years thereafter, appoint some suitable person to be Deputy City Judge] whose acts shall be of the same force and effect as if performed by the said City Judge, and the clerk shall make a like record of his proceedings.

In case of the sickness, absence or other inability of the Clerk of the Court, he may appoint a deputy clerk, who may perform the clerk's duties in his absence.[1] Absence of Clerk of Court.

The appointment shall be in writing, shall be subject to the approval of the judge, and shall be filed in said court. The said clerk or his deputy may administer all necessary oaths;[2] he shall enter judgments, issue commitments and executions to enforce the same, and make up and keep the records of the court in all cases therein, under the direction of the judge. He, or his deputy, shall issue all process under his hand and the seal of the court or City Judge, and test the same in the name of the judge, signing it by his title of office, and shall tax costs. The clerk or his deputy may issue warrants[3] upon complaints filed in writing and upon oath, in all cases returnable before the Judge of the Municipal Court. The clerk or his deputy may take bail[4] from persons ar- Appointment of Deputy Clerk. Duties and powers of Clerk. Clerk may take bail when the Court is not in session.

1. For appointment of clerk see Section 18.
2. In absence of Clerk of Municipal Court, House Sergeant may administer oaths. See page 163.
3. In absence of Clerk of Municipal Court, House Sergeant may issue warrants. See page 163.
4. In absence of Clerk of Municipal Court, House Sergeant may fix, approve and take bail. See page 163.

rested, when the court is not in session, subject to revision by the court, and shall also, under like direction of the judge, do all other acts necessary to carry out the jurisdiction of said court.]

In the absence of the City Judge or any person so authorized to hold said court, the clerk thereof shall open and adjourn said court from day to day.

Sole original jurisdiction of Municipal Court.

SEC. 15. The said Municipal Court shall have sole and exclusive jurisdiction to inquire of, hear, try, and finally determine all those criminal matters and offenses enumerated in the fifteenth section of the sixth article of the amended Constitution,[1] and committed within said city, and to punish all persons convicted of said offenses, or any of them, agreeably to the laws of this State, (a) and shall * * * * have * * * original jurisdiction to inquire of, hear, try, and determine all offenses which shall be committed within said city against any of the laws, ordinances, regulations or constitution of said city, and to punish the offender or offenders as by the said laws, ordinances, regulations, or constitution shall be prescribed; and also to impose fines according to law, and to levy the same, and to award process, take recognizance for keeping the peace, for being of good behavior, and for appearance, or otherwise, or to commit the prisoner, as occasion shall lawfully require, without being accountable to the State for any fines or amercements to be imposed for the said offenses, or any of them, except such as are, or shall be, by law, made payable into the State treasury for offenses against the State. The said court shall have authority to punish contempt, and to issue all process necessary for the exercise of its jurisdiction, which process may be executed in any part of the State, and it shall be the duty of all constables of said city to execute the same when placed in their hands, and any failure to properly execute the same shall be punishable as a contempt of said court. Whenever any person shall be brought before any Justice of the Peace, or before the City Judge, sitting as

See Act of April 17, 1885.

Original jurisdiction.

1. See Article IV, Sec. 30, Constitution 1897.

a committing magistrate, charged with the commission of any of the offenses enumerated in the fifteenth section of article VI of the Constitution of this State,[1] within the limits of the City of Wilmington, it shall be the duty of every such Justice, and of the City Judge sitting as aforesaid, to bind the person so charged, with sufficient surety for his appearance at the next term of the said Municipal Court, (b) and if he do not give such surety, shall commit him for trial by such court. Such Justice and the City Judge sitting as aforesaid, shall also bind material witnesses for their appearance without surety, unless he believe the witness will not appear and that the loss of his testimony ought not to be risked, in which case he may require surety and may commit the witness if it be not given.

(a) *Nicholson, Ch.*: "in addition to the sole original jurisdiction in all cases of the violation of "any of the laws, ordinances, regulations or constitutions of the city," he was also given sole and exclusive jurisdiction of "all those criminal matters and offenses enumerated in the Fifteenth Section of the Sixth Article of the Constitution of 1831, when the offense was committed within the city," &c.

State vs. Churchman, 3 Penn. 361 at 363. (yr. 1902)

(The offenses named in the Fifteenth Section of Article 6 of the Constitution, include assaults and batteries. In the Constitution of 1897 the reference is Art. IV, Sec. 30.)

Spruance, J.: "By Section 15 of the said act of 1883, the said Court was given sole jurisdiction of all criminal matters enumerated in said Section 15 of Article 6 of the Constitution of 1831—among which are assaults and batteries committed within said city."

Zuchowski vs. State, 3 Penn. 339 at 340. (yr. 1901)

Gray vs. The State of Delaware, 2 Har. 76 at 79. (yr. 1836)

The Constitution of 1897 did not affect the Municipal Court or its Judge in any way, and the jurisdiction of the Court over assaults and batteries therefore, still continues.

Grubb, J.: "That the said Municipal Court for the City of Wilmington, its Judge and its jurisdiction, were continued and existing under and by virtue of the provisions of the present Constitution and schedule."

Forbes and Hartman vs. State, 2 Penn. 197 at 204-5. (yr. 1899)

Zuchowski vs. State, 3 Penn. 339 at 340. (yr. 1901)

State vs. Churchman, 3 Penn. 361 at 363. (yr. 1902)

The jurisdiction over assaults and batteries is both a common law and a statutory jurisdiction.

Lore, C. J.: "This is an indictment for assault and battery. * * The Legislature has seen fit to create the Municipal Court, and to that court it has given sole and exclusive jurisdiction—among other things,—of assaults. This is an assault, and we think the jurisdiction extends not only to common law assaults but to any assault

1. See Article IV, Sec. 30, Constitution, 1897, and paragraph 5 of this section.

created by statute, unless the Municipal Court was distinctly ousted by express terms.''

State vs. Anderson, 1 Marv. 526 at 527. (yr. 1893)

But this statutory assault and battery jurisdiction is denied where the punishment carries ''ignominious penalties usually inflicted upon felons,'' such as wife-beating.

Spruance, J.: ''The assaults and batteries of which the said Municipal Court has jurisdiction are common law offenses, and not statutory assaults and batteries punishable by ignominious penalties usually inflicted upon felons.''

Zuchowski vs. State, 3 Penn. 339 at 340. (yr. 1901)

If one has been convicted on the charge of assault and battery he cannot afterwards be convicted of ''pointing a pistol,'' if ''the pointing of the pistol included and was a necessary part of the assault'' and battery.

State vs. Day, 5 Penn. 101 at 105. (yr. 1904)

The Municipal Court's exclusive jurisdiction over assaults and batteries committed within the City of Wilmington, does not prevent the Court of General Sessions in a charge of ''assault with intent to commit murder,'' of finding the accused guilty of assault only.

Pennewill, J.: ''We think that this general statute'' (Rev. Code 979, Sec. 20) ''is not in any way affected, modified or repealed with respect to assaults committed in the City of Wilmington, by Section 15 of the City Charter, p. 38. Whenever this Court has jurisdiction of a case of assault with intent to commit murder, and the jury are not satisfied from the evidence, that there was such an intent, they may, nevertheless, find a verdict of guilty of assault only, if the evidence should justify them in so doing, even though the assault was committed within the limits of the City of Wilmington.''

State vs. Scott, 4 Penn. 538 at 542. (yr. 1904), even though

Lore, C. J.: ''a recent statute has given to the Municipal Court of this city exclusive jurisdiction over assaults committed within the limits of the city,'' &c.

State vs. Christie, 2 Marv. 443. (yr. 1895)

The above Section (15) also gives the Municipal Court exclusive jurisdiction of all nuisances committed in the City of Wilmington.

Wolcott, Ch.: ''By Section 15 of the City Charter, the Legislature conferred upon the Municipal Court sole and exclusive jurisdiction of the entire group of offenses (including nuisances) enumerated in the fifteenth section of the sixth article of the Constitution, with power to hear, try and finally determine the same under the laws of the State of Delaware.''

Mayor and Council of Wil. vs. Vandegrift, 1 Marv. 5 at 17. (yr. 1893)

The above case was one of sledding on the streets of the city. This is a nuisance at common law, and the Chancellor said:

''the definition of a public nuisance by ordinance is not made a condition precedent to the exercise of jurisdiction of the same by the Municipal Court,'' &c. id 15.

The Municipal Court has exclusive jurisdiction where liquor is sold in quantities less than the quantity allowed by law, for this is practically selling without a license. The sale in the case below cited, was for less than one-half gallon.

State vs. Mundy, 1 Boyce, 40 at 44. (yr. 1909)

State vs. Lynch, 2 Har. p 88. (yr. 1836). Note ''a'' foot of the page.

(*b*) ''Wilfully trespassing'' upon a person's premises in the City

of Wilmington is a nuisance, and the Municipal Court has exclusive jurisdiction.

State vs. Greenwood, 2 Penn. 379. (yr. 1900)

(See note to paragraph 5 of this Section.)

In regard to the above offenses, and others enumerated in Sec. 15 of Art. VI of the old Constitution, (Sec. 30, Art. IV of Constitution of 1897) as embraced in Sec. 15 of the Charter, the Court said:

Wolcott, Ch.: "The Municipal Court of Wilmington is therefore a public instrumentality constituted by the Legislature for the trial and punishment of such criminal disorders as are enumerated in the section and article of the Constitution before referred to, and the duties of the municipal officers selected to execute its process in respect to such offenses are also stamped with the same character."

Mayor and Council of Wil. vs. Vandegrift, 1 Marv. 5 at 18. (yr. 1893)

Act of April 17, 1885.

Judge of the Municipal Court given powers of a Justice of the Peace in criminal cases.

Concurrent jurisdiction of Judge with Municipal Court.

Act of March 31, 1887. 18 D. L., 344.

When Court shall open.

[The Judge of the Municipal Court[1] for the City of Wilmington shall have and may exercise all the powers and jurisdiction of a Justice of the Peace in criminal cases for New Castle County, (a) and shall have and may exercise concurrent jurisdiction and powers with the Municipal Court for the City of Wilmington of all prosecutions for breach of any ordinance, law, rule and regulation of the City of Wilmington, and warrants for the arrest of the offenders thereof may be issued. [For this purpose he shall sit daily each morning (Sunday included), and each evening, when there shall be a session of the Municipal Court,] and hear and dispose of in a summary way all such offenses and cases of breaches which shall be brought before him by the police officers of the said city or otherwise, either with or without process, and impose the fines and penalties provided by law, ordinance, rule or regulation. At [each] session of the said Municipal Court shall be presented for disposal by the judge, according to law, all persons who have been arrested or confined in the city cells or other lock-up of said

1. Municipal Court may impose fines for violations of an Act to prevent the aiding or harboring of girls escaping from the Delaware Industrial School for Girls. See Chapter XVIII, "Miscellaneous Acts," this volume.

1. Municipal Court has jurisdiction for violations of provisions of an Act in relation to peddlers, &c. See Chapter XVIII, "Miscellaneous Acts."

1. Municipal Court may impose fines for violations of provisions of an Act Defining Motor Vehicles, &c. See Chapter XVIII, "Miscellaneous Acts."

1. Municipal Court may impose fines for violations of an Act relating to the trade of Barbers, &c. See Chapter XVIII, "Miscellaneous Acts."

1. Municipal Court may commit minors to the Ferris Industrial School. See 17 D. L. 713 and amendment of 23 D. L. 203.

1. The Municipal Court being a "Court of Record" may commit to St. Michael's Day Nursery and Hospital for Babies. See Chapter XVIII, "Miscellaneous Acts."

Duty of High Constable.

city, either with or without warrants, and for this purpose it shall be the duty of the High Constable of said city to cause all such persons to be brought before the judge of said Municipal Court for hearing or trial as aforesaid. It shall also be the duty of the said High Constable, or person acting for him, to personally attend and be present at all such hearings and sessions of the Municipal Court, to have ready and present to the clerk thereof at each * * session a list of the cases coming before the judge, and the names of the persons to be tried, the offense charged, and the names of the witnesses.]

(*a*) This power, in its general features, is similar to that possessed by the corporation from the earliest times.

Harrington, Justice: "The corporation of Wilmington enjoyed by patent, dated in 1739, the right to elect two burgesses and six assistants, * * which burgesses, by the same patent, and also by the Act of 1772, were invested with all the judicial powers, within the corporation limits, of justices of the peace within the county."

Gray vs. The State of Delaware, 2 Har. 76 at 93. (yr. 1836)

Act of April 17, 1885.

High Constable the officer of Municipal Court.

Duty of City and County Constables.

[The High Constable of said city shall be the officer of said court; process may be directed to the said High Constable, or to any City Constable of said city, or to any Constable of New Castle County, in said city. It shall be the duty of the High Constable and of any City or County Constable as aforesaid, to whom any order, writ, or other process may be issued out of said Municipal Court, or by the judge thereof, to properly execute the same; any failure so to do, and any failure to obey the lawful commands of said court, or to perform any duty by law or ordinance of said city imposed, relating to, or in connection with said court or municipal judge, may be punishable as a contempt of said court, and in case of the High Constable, or other City Constable of said city, he may be suspended from his office for a period of not exceeding thirty days, in the discretion of said judge, during which time he shall receive no pay or compensation from said city; in such case the clerk of said court shall certify to the City Auditor and City Treasurer the name of such officer so suspended, and the time and period of his suspension.]

Judge of Court may punish for contempt.

Duty of Clerk.

Act of March 31, 1887. 18 D. L., 344.

[All prosecutions brought in said court or before the City Judge for breaches of any of the municipal laws, ordinances or

regulations of said city, shall be in the name of "The Mayor and Council of Wilmington."] (*a*)

(*a*) Prosecutions for criminal offenses forbidden by a town charter are within the general criminal jurisdiction of the State, and in the absence of express or implied authority in the Charter to prosecute in the name of the city or town, the prosecution must be in the name of the State. The town of Dover brought an action in its own name for obstructing the streets. The Court held the prosecution should have been in the name of the State of Delaware.

Lore, C. J.: "We can find in said section, no express or implied authority for the town of Dover to proceed * in its own name. Such authority manifestly does not rest in the general corporate powers contained in the Charter to sue and be sued, plead and be impleaded, &c., terms quite uniformly used in describing the powers of all corporations, and if it exists at all, must be looked for elsewhere. * * In the absence of such authority the prosecution should have been in the name of the State of Delaware, under Sec. 25, Art. 6 of the Constitution, which is in the following words, viz: "The style of all process and public acts shall be The State of Delaware. Prosecutions shall be carried on in the name of the State."

Dover vs. Tawressey, 2 Marv. 285 at 288-9. (yr. 1896)

Act of March 31, 1887. 18 D. L., 345.

[It shall be the duty of every Justice of the Peace, or other committing magistrate, whenever any person is before him charged with any criminal matter or offense properly cognizable in the Municipal Court of the City of Wilmington, to inquire into the same, and if he shall find that there is probable ground for the charge, he shall hold the person accused to bail for his or her appearance at the evening session of the said Municipal Court,[1] (*a*) not more than four days distant from said hearing, and in default of bail, the person accused shall be committed to the custody of the High Constable of the City of Wilmington to await such session. All bail bonds shall be forwarded to the Clerk of the Municipal Court within two days after the said hearing, and every bail bond and commitment shall have indorsed upon the same an itemized statement of all costs which may have accrued up to that time, and the same shall be taxed as costs against the accused in any judgment or sentence which may be pronounced against such accused in the said Municipal Court; *provided, nevertheless,* that the judge of said court shall have power to strike off any portion of said costs which shall be illegal or which he shall deem unnecessary.]

Duty of the Justice of the Peace.

To hold accused to bail.

Commitment on default.

Costs endorsed on commitment.

(*a*) A Justice of the Peace adjudged one "guilty of a nuisance by

1. See paragraph one of this Section.

wilfully trespassing upon the premises,'' of a person in Wilmington. The case was taken to the Superior Court on the ground that, ''under the Charter of the City of Wilmington creating the Municipal Court, the sole and exclusive jurisdiction of the offense was vested in that Court.'' (380) The Court said:

Lore, C. J.: ''Let the judgment below be reversed, on the ground that the Municipal Court has exclusive jurisdiction to try nuisances committed in the City of Wilmington.''

State vs. Greenwood, 2 Penn. 379 at 380. (yr. 1900)

Mode of trial.

SEC. 16. Prosecutions in the said Municipal Court shall be by information, without indictment by grand jury or trial by petit jury. (*a*)

(*a*) *Grubb, J.*: ''Under and by virtue of this constitutional provision contained in Section 15, Article 6, of the late Constitution, the statute of 1883, Chap. 207, Vol. 17, Laws of Delaware, and the acts amendatory thereof, created the said Municipal Court for the City of Wilmington, authorized the appointment of its Judge by the Governor, and empowered it to try, among other matters, and upon information, and without indictment and trial by jury,'' &c.

Forbes and Hartman vs. State, 2 Penn. 197 at 199. (yr. 1899)

Under the old Mayor's Court of 1832 the manner of trial was as above. The Council, by ordinance, (pursuant to authority contained in its Charter) passed an ordinance to that effect, and the Court declared it had a right to pass such an ordinance.

Gray vs. State of Delaware, 2 Har. 76 at 94-96. (yr. 1836)

In a later case, the Court, in referring to it said:

Harrington, Justice: ''It was not a delegation of the legislative power of the State to enact in the City Charter, that the Mayor's Court should have power to try such cases ''with or without trial by jury, as should be provided by the ordinances of said city.''

Rice vs. Foster, 4 Har. 479 at 496. (yr. 1847)

In the case of State vs. Moore, 2 Penn. 299 at 321 (yr. 1899), which was a case where the defendant was tried by the Court of General Sessions by information and without the intervention of a jury, for violating Sec. 7 of Art. 5 of the Constitution, relating to bribery, the Court held that there was ''due process of law,'' and that such a method of trial was valid.

Solicitor prosecuting officer.

Appearance fee.

SEC. 17. The Solicitor of said corporation for the time being, shall be *ex-officio* the prosecuting officer in said Municipal Court, (*a*) provided that the Attorney-General of the State shall have the right to prosecute in person, or by his deputy; and there shall be taxed for the appearance of said City Solicitor a fee of two dollars, payable into the city treasury as provided in Section 27.

(*a*) See Sec. 40 of the Charter.

Clerk of Municipal Court.

SEC. 18. The City Judge shall appoint a suitable person to act as Clerk of the said Municipal Court, who shall hold his said office of clerk at the pleasure of the said judge. The said clerk shall have care of the records (*a*) of said Court and the records of all proceedings had before said City Judge, and he shall receive all fees, fines and costs arising out of any proceedings had in said court, or before said judge, and shall pay the same over as is hereinafter prescribed by law. [He shall before entering upon the duties of his office give bond to The Mayor and Council of Wilmington in the sum of three thousand dollars, with sufficient surety to faithfully execute all the duties of the said office during his continuance therein, such bond to be approved by the City Judge, and should such clerk so appointed fail to give bonds as required within ten days from the date of his appointment, the City Judge to make a new appointment.]

Duties.

Act of March 7, 1889. 18 D. L., 871.

Bond.

(*a*) The records should be gotten up with care, though the Court will presume regularity, in case of doubt. If a commitment does not show the judgment found by the Judge of the Municipal Court, yet, it will be presumed that the Judge did his duty, and followed the law, in regard to it, and vague testimony will not be permitted to impeach the record.

Grubb, J.: "The Municipal Judge, being a sworn judicial officer * * and having made out the commitment," it will be presumed that he "performed his duty * * and followed the law and obeyed the law. * * And * * vague and immaterial testimony" will not be permitted "to impeach or contradict what the record from the Court below shows, and the just, fair and legal inference which" one would "draw from it."

In re Phillips Petit, 5 Penn. 133 at 137. (yr. 1904)

In a civil action for assault and battery, it was held one could not offer in evidence to mitigate damages, a certified copy of the record of a criminal prosecution in the Mayor's Court in Wilmington, against the defendant, for the same assault and battery, and his conviction, sentence and fine.

The Court: "It was not the record of a suit between the same parties, and was therefore, not admissible."

Keller vs. Taylor, 2 Houst. 20. (yr. 1858)

Witness fees.

SEC. 19. The fee for the attendance of a witness in said court, provided the witness is an inhabitant of said city, shall be fifty cents per day. In all other cases and for all other services, the fees shall be the same as are provided for like services by Chapter 125 of amended Revised Code. (*a*)

(*a*) See note to Sec. 25 of the Charter in regard to the law in general, in reference to the payment of witness fees to public officials who testify in behalf of the body they represent or serve.

Act of April 21, 1887. 18 D. L., 360.

[All witness fees which shall hereafter be paid to the Clerk of the Municipal Court, and not claimed by the persons entitled to the same within thirty days from the time said fees come into the hands of said clerk, shall be forfeited to the city, and paid by said clerk into the city treasury.]

Unclaimed witness fees.

Appeal.

SEC. 20. There shall be no appeal from said Municipal Court to the Court of General Sessions of the Peace and Jail Delivery, except in the case hereinafter provided; but the proceedings of the said Municipal Court shall be subject to revision by the Superior Court in and for New Castle County upon writs of certiorari, (*a*) and after its judgments shall be affirmed, or reversed, the said Municipal Court may proceed to execution, or otherwise, as shall according to law appertain; *provided* that before the issuing of such writ of certiorari the party applying for the same shall enter into a recognizance (*b*) to The Mayor and Council of Wilmington, in a penalty and with surety to be approved by the Prothonotary of said Superior Court, and with condition that the said party, so applying for the same, shall prosecute said writ with effect, or otherwise that he will in all things abide the judgment of the said Municipal Court if he shall fail to make his plea good, or the same be affirmed by the Superior Court; which recognizance shall be entered upon the docket succeeding the entry of the certiorari and shall be a part of the record of the same.

Certiorari.

Recognizance.

(*a*) In certiorari to the Superior Court to test the jurisdiction of the Municipal Court, the Court will examine the act to see if it confers jurisdiction in express language, and if the act was passed by the requisite vote to make it binding on the city, viz, a two-thirds vote.

Spruance, J.: "It will be observed that the said Act of February 22, 1901, does not expressly confer upon the said Municipal Court jurisdiction of the offense," * * and "said act does not appear to have been passed with the concurrence of two-thirds of all the members elected to each House as required by Sec. 30, Art. 4 of the Constitution," &c.

Zuchowski vs. State, 3 Penn. 339 at 341. (yr. 1901)

(*b*) The law calls for a "recognizance," not a bond.

See the case of Fletcher vs. Mayor and Council of Wilmington, in Sec. 23 "b" of the Charter.

Nuisance affecting street, lane, or alley.

SEC. 21. Upon an information in the Municipal Court for a nuisance (other than a nuisance against the public health) affecting the public streets, lanes, or alleys of the city,

if the party against whom the same is filed shall, by affidavit, claim a right of property in that part of the street, lane, or alley, in which the offence is alleged to have been committed, either in himself or those under whom he holds, and shall also aver, in the said affidavit, that the said claim of property is made in good faith for the purpose of defense and not for delay, proceedings in said court shall be stayed, and the clerk shall forthwith transmit to the Clerk of the Court of General Sessions of the Peace and Jail Delivery in and for New Castle County a copy of the record, under the seal of the Municipal Court, to be filed in the said Court of General Sessions, and thereupon the case shall be proceeded in at the next term of the said court upon the information set forth in the copy of the said record, in like manner with like effect as upon an indictment for the like offense.

Right of property.

Transmission of record to Court of General Sessions.

Sec. 22. Before staying proceedings under the foregoing section, the Municipal Court shall cause the party against whom the information is filed, to enter into a recognizance to the State of Delaware to appear in the said Court of General Sessions, at the next term thereof, and plead to the said information.

Recognizance.

Sec. 23. Upon failure of a defendant to satisfy any judgment which may be rendered by the Municipal Court against him for the violation of a city ordinance, it shall be within the discretion of the Municipal Court to commit the defendant to the custody of the High Constable until the judgment shall be fully satisfied; but any person so committed may, within three days thereafter, appeal (*a*) from any judgment so rendered against him to the Superior Court for New Castle County. Such person appealing shall enter into recognizance (*b*) with sufficient surety in such sum as the said Municipal Court shall determine, conditioned for the due prosecution of the appeal and for the payment of any judgment which may be rendered in said court against the appellant or his executors or administrators. The filing of a transcript, modes of trial, and forms of proceedings shall be as in cases of appeal from the judgment of Justices of the Peace. (*c*)

Court may commit. When.

Right of appeal.

Surety.

(*a*) An appeal opens up the whole case anew, but it must be *that*

case. In an action in the Superior Court for damages, a witness testified that the driver of the defendant had been arrested and tried before the Municipal Court for reckless driving, and thereupon, in cross-examination the witness was asked: "What was done with the charge?" (67)

Spruance, J.: "It has nothing to do with this case. It is not material what the magistrate" (Judge of Municipal Court) "did or did not do, upon that charge, and we rule the question out."

Price vs. Warner Co., 1 Penn. 462 at 467. (yr. 1899)
Keller vs. Taylor, 2 Houst. 20. (yr. 1858)

(*b*) The law calls for a "recognizance." A bond will not do. The Court decided this point in the case below cited.

Fletcher vs. Mayor and Council of Wilmington. (yr. 1906) App. Dock. 174.

(c) On appeal to the Superior Court one should file the same kind of a paper, as was filed in the Municipal Court.

Lore, C. J.: "The Court is clear that an information, such as filed in this case, conforms to the nature of the proceedings below, and also in this Court, and that it is the proper paper to file in contemplation of the statute in that behalf."

Pratesi vs. Mayor and Council of Wil., 4 Penn. 258 at 259. (yr. 1903)

(In the above case in the Municipal Court, an information was filed for violating an ordinance,—obstructing a street.)

Seals of Court and City Judge.

SEC. 24. The said City Judge shall, immediately upon his appointment, procure, or cause to be procured, a seal for said Municipal Court, and a further seal as City Judge, with suitable designs; and said seals shall be the seal of said court and the seal of the said City Judge, respectively, until altered or renewed by the Council at the request in writing of said City Judge. The cost of procuring the said seals shall be paid by the Council when certified to be correct by the said City Judge.

Witness fees

SEC. 25. All fees for the attendances for the prosecution in any criminal case or proceeding had in the said Municipal Court in which it shall be determined by the said Court that the said case or proceeding ought to be dismissed as against the defendant therein, shall be paid out of the city treasury; *provided* that nothing in this section shall authorize the payment of witness fees (*a*) to any person who shall at the same time be a High or other City Constable. The payment of such fees shall be by a warrant of the Clerk of said Court, directed to the City Treasurer, setting out the case in which, and the person to whom, such fee is due, and such warrant shall be signed by the Judge of said Court and approved by the City Auditor. The said warrant shall be made payable to the person to whom such witness fees are due.

Manner of payment.

(*a*) In regard to officials of a defendant public corporation, who attend as witnesses in a suit against the corporation, obtaining witness

fees, when they have no private interest in the case, the Court said:

Lore, C. J.: "The Trustees of the Poor are not private parties; they are public officers, and we do not see why they should be precluded from payment for their attendance upon this Court. * * This is not a private corporation, but a public corporation, where they are performing a public duty, and whether the person is the President or the Secretary, or whether he is only one of the Trustees, it matters not. * * They have no private interest in this action."

Taylor vs. Trustees Poor, N. C. Co., 1 Penn. 247 at 248. (yr. 1898)

Conservator of the peace.

SEC. 26. The City Judge is hereby constituted a conservator of the peace within the City of Wilmington, and shall have power as a committing magistrate, to commit for trial at the proper court all persons charged with a breach of any of the laws of this State, or with a breach of any of the laws, ordinances, regulations or constitution of the City of Wilmington. He may also punish by fine, not exceeding ten dollars, all breaches of the peace committed within said city, punishable by any law of this State and not herein made cognizable by the Municipal Court for said city, where the offense is not of a high or aggravated nature, if, after a hearing, he shall be satisfied that the case ought not to be submitted to a higher jurisdiction; otherwise he shall commit or bind the defendant for his appearance at the proper court to answer the charge, and shall also bind the witnesses for their appearance, and may require surety of them if necessary. The fees to be charged for services under this section, shall be the same as those authorized to be charged by Justices of the Peace in like services, and shall be collectible in like manner, for the use of the city, as provided in Section 27. The process issued by the said City Judge, sitting as a committing magistrate, shall be the same as is issued by Justices of the Peace in like cases, and all such process may be directed to the City Constables and shall be executed by them in like manner as process issued out of the said Municipal Court, and any failure to properly execute said process shall be punishable by said City Judge as a contempt.

Powers.

Fees.

Process. How executed.

Taxation of costs.

SEC. 27. The same fees,[1] costs and charges which in any similar proceeding are now taxable for the services of the Mayor or any Justice of the Peace, shall be taxed for the ser-

1. See Sec. 47.

vices of the Judge of the said Municipal Court, and all fees, costs and charges which are so taxed, and all fees, costs, and charges, including the fee for the attendance of the City Solicitor, together with witness fees for the services or attendance of any High or other City Constable in said court, shall be and are hereby made payable into the city treasury; (a) and it shall be the duty of the Clerk of said court to make out, by the first Tuesday of every month, a detailed statement of the causes tried in the said Municipal Court during the month last past, having set out therein an itemized account of all fines, costs, charges and fees by this act made payable into the city treasury and in his hands, which statement shall be approved by the City Auditor. Upon such approval the said clerk shall forthwith pay into the hands of the City Treasurer all such fines, fees, costs and charges in his hands.

Clerk to make out itemized statements monthly.

Contents.

Payment to City Treasurer.

(a) See note to Sec. 25 of the Charter in regard to witness fees of public officials, who attend Court as witnesses for the corporation.

Judge may take acknowledgments, etc.

Fee.

SEC. 28. The said Judge of the Municipal Court shall also have power to take and certify under his hand and the seal of the Municipal Court, acknowledgments of deeds, mortgages, and letters of attorney, and the private examinations of married women, parties to such deeds and mortgages, in like manner as a Notary Public may do; for which duty there shall be charged a fee of seventy-five cents, and no more, whether there be one or more parties to the deed, and such fees shall be paid to the clerk for the use of the city.

COUNCIL.

Act of March 25, 1907. 24 D. L., 345. Council, how composed.

Act of March 25, 1907. 24 D. L., 356.

Term of office.

President.

Election of members.

SEC. 29. [On and after the first day of July, A. D. 1907, The Council shall consist of a President of Council and twelve other members. (a) At the city election to be held on the first Saturday in June, A. D. 1907, and every [second] (b) year thereafter, there shall be elected, a President of Council and twelve members of Council, for the term of two years commencing on the first day of July next succeeding said election. The President of Council shall be the presiding officer, and a member of said Council and shall be elected from the city at large by a plurality of all the votes cast in the several election districts of

the city. One member of Council shall be elected from each ward of the city by a plurality of all the votes cast therein.]

(*a*) "The Council" is the mere creature of the Legislature, and it may change or abolish its powers or transfer them at will to whom it may please.

Saulsbury, Ch.: "All the agencies of the city * * can be abolished or changed at the will of the Legislature," &c. * * "The Legislature can divest the Council of any and every power and authority it possesses. It can direct that those powers should be exercised by any other department or agency of the city government, and it could even direct that the functions now performed by the City Council should hereafter be performed by a like number of any other corporators of the city."

Coyle vs. McIntire, 7 Houst. 44 at 98. (yr. 1884)

(*b*) In regard to the provision that elections should be held every "second" year, see note "a," Section 6, of the Charter.

Meetings.

Act of April 19, 1889. 18 D. L., 885.

Special meetings. How called.

Sittings public. Judge of its members.

Officers. Rules and Journal.

SEC. 30. The Council shall hold a meeting for organization, [on the first day of July next ensuing the city election, or if that day falls on a Sunday, then on the Monday following;] and shall further meet at least once in every month at such time or times and place as it shall appoint. Special meetings (*a*) may be called by the Mayor upon his own motion, or shall be called at the request of five members. The sittings of the Council shall be public. It shall be the judge of the election returns and qualifications of its members, and of all officers of the corporation. (*b*) It shall choose its officers except where otherwise provided for in this charter. It shall determine the rules of its proceedings and keep a journal (*c*) of the same.

(*a*) Ordinances may be passed at "special meetings." See paragraph 2, note "c" of this section.

(*b*) Notwithstanding this provision "The Council" can be mandamused to judge according to law.

Layton, J.: "although * * the act of incorporation declares that the City Council 'shall be the judges of the election returns and qualifications of their own members, and of all other officers of the corporation,' yet this power is vested in the City Council, to act within the legitimate scope of their authority. It is not a question of mere discretion, independent of a right of review by the Superior Courts of law, for an *unjust* and *illegal* exercise of this power vested in the corporation by law. * * will it be contended for a moment, that this Court, in the exercise of this extraordinary power, cannot look beyond the mere fact of decision by the City Council into the justice and legality of that decision? Could it have been the design of the Legislature to vest in this corporation the power to do an act of gross injustice, inconsistent with the rights of the corporators * * without subjecting their unjust and corrupt decision to the supervision of the Superior Court, in conformity to the principles of the common law, under and subject to which the corporation accepted its charter? So gross a

proposition need only to be properly stated to be unhesitatingly repudiated.''

State vs. Wil. City Council, 3 Har. 294 at 309. (yr. 1840)

A writ of certiorari will also lie from the Superior Court to ''The Council,'' (in case of a contested election fight before the Council,) to send up the record, to ascertain if The Council has jurisdiction in the matter. It was contended that the above provision making The Council's decision final (Act of 1845) took from the Superior Court any former right it might have had by a prior statute. The Court said a certiorari was a common law writ, and that the authority to issue it was both a constitutional and a statutory right, primarily a constitutional right,—and that since 1831 it has been clearly a constitutional right, and this right, of course, could not be taken from it by the said Act of 1845—the above provision of the Charter.

Rash vs. Allen (yr. 1909) App. Dock. 317 and 387.

Ross vs. Allmond (yr. 1909) App. Dock. pp. 318 and 388.

(The contest was under Sec. 27, Act of 1893.)

In case of a contest for a seat in Council, the new or incoming Council, and not the old and retiring body, is the one to hear and pass upon the qualifications of its members.

Willis vs. Ross. (yr. 1906)

(*c*) This is, perhaps, directory, only.

Elliott et al vs. Council Newark, 8 Del. Ch. 64 at 80. (yr. 1896) (Decision by Nicholson, Ch.)

A delay of 4 years in recording an Ordinance in the Ordinance Book did not affect its validity. id 80.

Act of April 19, 1889. 18 D. L., 885.

Quorum.

Ordinances.

Repeal.

Ayes and noes.

Election of officers.

[On and after the first day of July, A. D. eighteen hundred and ninety, seven members shall constitute a quorum (*a*) to do all business; but until said last mentioned date, twelve] members shall constitute a quorum to do all business. No ordinance (*b*) shall be passed without the concurrence of a majority of all the members of the Council and unless it shall have had at least two readings at a previous stated meeting or meetings (*c*) nor shall any ordinance be repealed unless notice shall have been given and entered on the journal (*d*) of the Council at a stated meeting, that at the next succeeding stated meeting an ordinance would be introduced for such repeal. All questions shall, upon the call of two members, be taken by ayes and noes, which shall be entered upon the journal. (*e*) All elections for officers to be appointed by the same, shall be by ballot and by a majority of votes of all the members of the Council.

(*a*) Seven constitutes a quorum, and a *majority* of that quorum may transact business, and do all acts, except where the Charter requires a different number.

Bayard, C. J.: ''It follows, therefore, that as this was a *corporation* election, in which, by the rules of the common law, it requires a *majority* to make a choice,'' &c.

State vs. Wil. City Council, 3 Har. 294 at 301. (yr. 1840)

''In other words * * a major part of the whole is necessary to

constitute a quorum, and a majority of the quorum may act."

I Dillon, Munic. Corps., Sec. 283.

"Thus * * if the body consists of twelve common Councilmen, seven is the least number that can constitute a valid meeting, though four of the seven (the seven being duly assembled and present) may act." id. 278.

McQuillen on Munic. Or'd's., Sec. 105.

(*b*) *Booth, C. J.*: "An ordinance * * is but a law of the city. The making of it is the exercise only of the law-making power of the city," &c.

Rice vs. Foster, 4 Har. 479 at 497. (yr. 1847)

(*c*) If an ordinance be read twice at a "previous stated meeting," and be passed at a subsequent "special" meeting, (notice being given as to why the special meeting was called) it is valid.

Elliott et al vs. Council Newark, 8 Del. Ch. 64 at 79. (yr. 1896) (Decided by Nicholson, Ch.)

(*d*) This requirement evidently is mandatory, and to render the ordinance valid, should be complied with. The failure to enter the aye and nay vote upon the journals of the two Houses of the Legislature, as required by the Constitution of our State, was held to render a law passed by the Legislature, void.

Rash, r. b. vs. Allen, a. b. (yr. 1909) App. Dock. 317 and 387.

Ross, r. b. vs. Allmond, a. b. (yr. 1909) App. D. 318 and 388.

(*e*) This provision should also be followed, but, it is submitted, in view of the decision of the Court in Banc, in the cases above, in note "d," that it is directory only.

Legislative branch.

SEC. 31. The members of Council shall constitute the legislative body of said city, and shall be denominated, when assembled, "The Council." (*a*) The Council shall have power to enact ordinances (*b*) to preserve the health (*c*) of the city, and to prevent the introduction of infectious or contagious diseases, for which purpose its jurisdiction shall extend to any distance within one mile of the limits of the city. The Council may also pass ordinances to define and remove nuisances; (*d*) *to ascertain and fix the boundaries of streets, squares, lanes and alleys, or to repair and amend the same, and provide for the paving thereof, or to alter, extend, or widen any street, square, lane, or alley, or open and lay out new ones, subject to the provisions in that behalf hereinafter contained; to regulate and fix the ascent and descent of all streets, lanes and alleys; to direct the paving of footways and to prescribe the width thereof; to direct the laying out of gutters and to prescribe the depth thereof; to prescribe the extent of steps, porches, cellar-doors and*

Powers.

Prevention of diseases.

Nuisances.

Streets.

Ascents and descents.

Footways.

Gutters.

Steps.

Porches.

Night watches. Lighting streets.

other inlets to buildings;[1] to provide night-watches and for the lighting of streets at the expense of the corporation, and generally to prescribe and regulate the use of the highways, (*e*) streets, squares, lanes and alleys of the city, and to have and exercise control over the same, subject to the provisions in that behalf hereinafter contained, and to the general supervision and control of the General Assembly, to provide for the regulation of auctions and auctioneers,[2] for cleaning docks and regulating wharves (*f*) of the city: also to regulate public amusements; to fix and declare the weight of bread and size of brick; to regulate the cordage of wood and bark, and to determine what may be esteemed merchantable; to appoint wood-corders and establish their fees; to regulate party walls; to provide for the safety of the citizens, and for that purpose may prescribe the height, thickness of walls and material of buildings and the mode of erecting the same within said city, and for providing for and securing the safety of the inmates thereof, and may make provision for the enforcement of such regulations; to erect market houses, and to provide for and regulate markets; to provide against the adulteration of milk and cream sold or brought to be sold in the said city, and to provide for the proper inspection of the same; (*g*) to provide for the proper lighting of streets, squares, lanes and alleys of said city, and in its discretion to provide for the payment of the expenses thereof; to regulate the sweeping of chimneys and establish the rate therefor; to appoint gaugers, inspectors of salted provisions, and inspectors and measurers of lumber, and to establish their fees; to provide for the weighing of hay, and for the measuring or weighing of coal, lime, grain, or any other matter sold in the said city; to regulate the storage of gunpowder or any other dangerously combustible matter. They shall have power to lay and collect fines on the owners or harborers of any dog or hog which may be found at large in any of the streets, lanes, or alleys of the city aforesaid, and in gen-

Auctions. Docks. Wharves.

Cordage of wood and bark.

Party walls.

Building regulations.

Markets.

Prevention of adulteration of milk.

Inspectors of provisions, lumber, hay.

Measuring and weighing coal, lime, etc.

Gunpowder.

Levy fines on keepers of dogs.

1. The above powers printed in italics are now vested in the Board of Directors of the Street and Sewer Department. See Act of Assembly. Infra.

2. Council may also license and tax auctioneers. Act of May 29, 1897. 20 D. L. 691. See Chapter XVIII, "Miscellaneous Acts," this volume.

eral shall have power to do all those matters and things for the well-being of the said city which shall not be in contravention of any existing laws of this State or the Constitution thereof. (b) Every bill, which, after the passage of this act, shall have passed the Council, shall, before it becomes an ordinance of said city, be presented to the Mayor of said city. If he approve, he shall sign it; but if not, he shall return it with his objections to the Council, who shall enter the objections at large on their journal and proceed to reconsider it. If, after such consideration, two-thirds of all the members of the Council shall agree to pass the bill, and it shall be so passed, it shall become an ordinance of said city. If any bill shall not be returned to the Council by the said Mayor within ten days (Sundays excepted) after the same shall have been presented to him, the same shall become an ordinance in like manner as if he had signed it. (i) In all such cases the votes of Council shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of the Council. The Council shall not have power to pass any ordinance exempting any individual from the operation of any general ordinance or municipal regulations. (j)

General powers.

(a) *Harrington, Justice*: "the City Council is the legislature of the corporation."
Rice vs. Foster, 4 Har. 479 at 503. (yr. 1847)

(b) "The City of Wilmington is a municipal corporation, invested by the express terms of its Charter, with power to make ordinances, subject to the control of the Legislature, for its own local purposes and the government of the city, which can affect none but those who come within its jurisdiction, or have assented to them, by themselves or their representatives," id 497. And see p. 503.

(c) The Council, and not the Board of Health, has the power to pass ordinances concerning the public health.
The Mayor and Council of Wil. vs. Reed. (Munic. Court decision, yr. 1910.) Decision final.

(d) *Wolcott, Ch.*: "In this connection it may be asked, why was the authority given to "The Council," now the "Street and Sewer Department," to define nuisances as provided in Sec. 31 of the City Charter?" * * The power "may well have been given to declare such acts, conditions and objects to be nuisances that are not clearly within the legal notion of a public nuisance at common law."
Mayor and Coune. of Wil. vs. Vandegrift, 1 Marv. 5 at 16. (yr. 1893)
Thus construed it does not conflict with "the jurisdiction of the Municipal Court, as provided in the first branch of the jurisdiction clause of said Section 15." id 16.
And the city is not liable for the failure of the police to prevent or suppress nuisances. id 16-17.

(The above referred to sledding on the streets of the city.)

The Council would have no authority to authorize a nuisance unless given power to do so "expressly or by necessary inference" by the Legislature.

State vs. Luce, 9 Houst. 396 at 398. (yr. 1885)

(The above referred to a fish factory.)

The Chancellor: "Nothing short of the express authority of an act of the Legislature would be sufficient for this purpose."

Gray vs. Baynard, 5 Del. Ch. 499 at 502. (yr. 1883)

For a short definition of a nuisance, see State vs. Wetherall, 5 Har. 487. (yr. 1854)

(*e*) The above provision relating to streets, &c., is set out verbatim in the case mentioned below, and principally upon the phrase "to prescribe and regulate the use of highways," the Supreme Court decided, that the Street and Sewer Department, and not "The Council," had the right now (since 1887) to pass ordinances or resolutions concerning the use of fenders by street car companies.

Bullock's Admr. vs. W. C. Ry., 5 Penn. 209 at 213. (yr. 1905)

(*f*) Wharf rents belong to "The Council," not the Street and Sewer Department.

Street and Sewer Department vs. Connell, 2 Penn. 571 at 572. (yr. 1900)

(*g*) The Council cannot exact a license for sale of milk under this provision.

Lore, C. J.: "We do not see, and certainly it has not been shown that the right to demand a license is in any way a necessary part of that power."

Gray vs. Wilmington, 2 Marv. 257 at 269. (yr. 1896)

(*h*) *Pennewill, J.*: "Under such provision" (welfare clause) "we think said town council had the power to adopt the ordinance making it an offense for any one "to be drunk, noisy and disorderly within the limits of said town."

McCaffrey vs. Thomas, 4 Penn. 437 at 440. (yr. 1903)

(*i*) Until the above has been done it is not an ordinance but merely a "bill," and if endorsements have been made on it, during its passage, they would not be treated as "additions" to, or "alterations" of, the bill.

Spruance, J.: "endorsements on a bill are the minutes of the stages of its progress through the Legislature," and are usually "put on the back of a bill for convenience and identification."

State vs. Hegeman, 2 Penn. 147 at 151-2. (yr. 1899)

The violation of an ordinance is, in a civil action for damages, negligence per se.

Comegys, C. J.: "disobedience of a city ordinance is unquestionably, to say the least of it, inexcusable, if not wilful negligence."

Jones vs. Belt, 8 Houst. 562 at 564. (yr. 1884)

MacFeat's Admr. vs. P., W. & B. R. R., 5 Penn. 52 at 66 and 69. (yr. 1904)

Giles vs. Diamond State Iron Co., 7 Houst. 453 at 466. (yr. 1887)

Robinson vs. Simpson, 8 Houst. 398 at 407. (yr. 1889)

Knopf vs. P., W. & B. R. R. Co., 2 Penn. 392 at 396-7. (yr. 1900)

(*j*) *Lore, C. J.*: "Here is a general ordinance for an entire class of people, which licenses those of them who sell more

than twenty quarts, and exempts them who sell less than twenty quarts. Section 31 of the municipal Charter says: "The Council shall not have power to pass any ordinance exempting any person from the operation of any ordinance or municipal regulation." They cannot discriminate. We think both judgments should be reversed and so order."

Gray vs. Wilmington, 2 Marv. 257 at 269-70. (yr. 1896)

Where a projection beyond the building line (bay window) was not of such a character "as to materially and substantially interrupt or impede the public use of the same as a street or highway," (500) though illegal, the Court of Chancery will not interfere; and in such a case will not "decide whether the special ordinance authorizing the respondent to erect the windows in question, was or was not within the power of the City Council."

Gray vs. Baynard, 5 Del. Ch. 499 at 502. (yr. 1883)

In view of the decision of Gray vs. Wilmington (above cited) and the Charter provision itself, the special ordinance, granting permission to erect bay windows beyond the building line, was clearly illegal.

[In addition to the above, the Council shall also have the following powers, viz: Act of March 25, 1907. 24 D. L., 351.

First. The Council shall have the power and it shall be its duty, on or before the first day of June in each and every year, to appropriate to and for the Departments hereinafter named, sums of money to whatever amounts the Council may deem proper, provided that the minimum amount for the Departments respectively shall not be less than the following: City Council. Powers.

Board of Health, One thousand dollars per annum; Board of Police Commissioners, Ninety thousand dollars per annum; Board of Public Education in Wilmington, One hundred and eighty thousand dollars per annum; Board of Water Commissioners, One hundred and twenty thousand dollars per annum; Board of Directors of the Street and Sewer Department, One hundred thousand dollars per annum. Such appropriations (a) shall be paid to the respective Departments in quarterly portions thereof during the months of August, November, February and May. All rents, incomes, receipts, revenues, and moneys from any and all sources now received, or hereafter to be received by any of said Departments (excepting the Board of Public Education in Wilmington, and excepting the annual appropriations made by the Council to the said Departments respectively), shall be paid monthly on the first secular day in each and every month by the said Departments respectively to the City Treasurer for the use of the city, to be expended Appropriations. Monthly payments.

for municipal purposes in such manner as the Council may deem proper.

(*a*) These appropriations are all made to the departments or agencies of the city—in other words to the city itself.

In this respect it complies with Art. VIII, Sec. 8 of the Constitution which prescribes: "No * * city shall * * appropriate money to * * any private corporation, or any person or company whatever." The same constitutional provision applies to the county but the Court held the Levy Court could make appropriations to the Ferris Reform School.

Lore, C. J.: "Such appropriation is so broadly public and impersonal in its scope and character as to rebut, if not rebuke any suggestion of private emolument, or private interest within the intendment of the Constitution, which clearly means that the county shall not be a party in, or to, private corporations."

State vs. Levy Court, 1 Penn. 597 at 604-5. (yr. 1899)

Reasoning of the above character made valid the appropriations that "The Council" made to the fire companies of the city for these appropriations were "broadly public and impersonal in" their "scope and character." Sec. 68 of the Charter which related to appropriations to fire companies is now repealed, and the companies now enter into contracts with the city.

Act of April 5, 1909. 25 D. L., 305.

Moneys to be retained by Street and Sewer Department.

[*Provided, however,* that on and after the first day of July, A. D. 1909, that all rents, incomes, receipts, revenues, and moneys from any and all sources thereafter received by said Street and Sewer Department, with the exception of sewer liens, shall be retained by the said Street and Sewer Department.]

May anticipate appropriation for running expenses.

Second. The Council shall have power and authority, until the appropriations provided for in this section shall become due and payable to the Departments respectively, to pay to each of said Departments, an amount sufficient to meet the running expenses of the Departments respectively; *provided, however,* that the total amount so paid to any such Department shall not exceed the amount received from any such Department under the provisions of this section.

Salaries of officers of Council.

Third. The Council shall also have power and authority to fix the salaries of all officers and employees paid by said Council. (*a*)

(*a*) See notes to Sec. 48 of the Charter.

Fourth. The Council shall have the same powers in all respects as are conferred upon the Mayor by Section 2 of this

Act. This power may be exercised by the Council in the name of The Mayor and Council of Wilmington, and process shall be signed and attested by the President and Clerk of Council respectively. The expenses incident to the exercise of said powers shall be paid by the Council upon presentation of an itemized bill therefor, certified to as correct by the President of Council. Oaths may be administered by any member of the Council, and any false answer or statement made under oath at any such inquiry or investigation shall be deemed perjury, and shall be punishable accordingly.]

CITY TREASURER.

Act of March 25, 1907. 24 D. L., 345. Act of March 25, 1907. 24 D. L., 356.

SEC. 32. [At the city election to be held on the first Saturday in June, A. D. 1907, and on the same day in every [second] (*a*) year thereafter, the voters in the respective election districts shall vote for a City Treasurer, (*b*) who shall be elected by plurality (*c*) of all the votes cast in the several election districts in the city. The City Treasurer shall hold office for the term of two years, commencing on the first day of July next succeeding his election. On and after the first day of August, A. D. 1907, the City Treasurer shall appoint a clerk for his office, to be known as City Treasurer's Clerk, who shall hold office at the pleasure of the City Treasurer. The City Treasurer shall have power to discharge said Clerk at any time, and his acts in this regard shall not be questioned. Such Clerk shall receive a salary of Nine hundred dollars per year,[1] payable in the same manner as other city officers are paid. The Council shall have power by ordinance to increase the salary of such Clerk at any time.]

City Treasurer, election of.

Term.

Clerk.

Clerk's salary.

(*a*) See note "a," Sec. 6 of the Charter for an explanation of the word "second" in the above section.

(*b*) *Harrington, Justice.*: "Before the adoption of any constitution in this State, the office of treasurer of the borough of Wilmington was established. * * It (borough of Wilmington) received a charter from the General Assembly in 1772, by the 25th section of which the freeholders and electors within the borough

1. City Treasurer's Clerk now receives $1200 per annum. See Ordinance of Aug. 5, 1909, this volume.

were authorized at every annual election, to choose a treasurer for the borough.''

State vs. Wil. City Council, 3. Har. 294 at 301. (yr. 1840)

The qualifications of city officials are contained in Sec. 4 of the Charter. That Section prohibits a minister of the gospel holding a city office. The Constitution of 1831 contained a similar provision in reference to any ''civil office in this State.'' The Court held that the office of City Treasurer was not a ''civil'' office, and that the constitutional clause referred to State and county, and not to municipal officers.

Layton, Justice: ''Corporate officers are not State officers,'' &c.

State vs. Wil. City Council, 3 Har. 294 at 310. (yr. 1840)

Nicholson, Ch.: ''the office of Treasurer of the City of Wilmington was not a civil office in this State within the meaning of that constitutional provision.''

State vs. Churchman, 3 Penn. 361 at 369. (yr. 1902)

The Court thus held that a minister of the gospel was eligible in relation to municipal offices. Sec. 4 of the Charter renders him ineligible. The Constitution of 1897 excludes the prohibitory provision that was in the Constitution of 1831, so that now, a minister of the gospel is eligible for any State office, (formerly, he was not), but he is, now, not eligible for any city office, (formerly he was).

The reason given for his exclusion from State offices, formerly, was a desire to keep the affairs of the Church and State separate.

State vs. Wil. City Council, 3 Har. 294 at 302. (yr. 1840)

See Sec. 4, note "a," par. 2.

(*c*) This provision expressly says a ''plurality'' shall elect. In the absence of such a provision it would require a ''majority.''

Layton, Justice: ''It appears there were 986 votes cast at the election held on the 13th of October, of which John Hagany received but 490, being a plurality over other candidates, but a less number than a majority of all the corporators who voted at that election. I am of opinion, therefore, and concur with the chief justice, that John Hagany was not duly elected treasurer of the City of Wilmington.''

State vs. Wil. City Council, 3 Har. 294 at 310-311. (yr. 1840)

(Hagany had a plurality of one vote, but lacked seven of a majority.)

Bond.

Warrant of Attorney.

SEC. 33. The City Treasurer shall, before entering upon the duties of his office, (*a*) give bond to ''The Mayor and Council of Wilmington,'' in such amount as shall be determined by the Council, with surety to be approved by the Mayor and President of Council, conditioned for the faithful performance of the duties of his office, with a warrant of attorney for the confession of judgment thereto annexed. (*b*)

(*a*) See Sec. 11, ''a,'' as to the phrase ''before entering upon the duties of his office.''

(*b*) There used to be a statute making the act of limitations on the Treasurer's bond two years after the expiration of his term of office. The Court construed that act strictly, and held that judgment could not be entered up after the said two years, and it also held that the rule, that, in cases of concealment of fraud, the statute begins to run from discovery of the fraud, did not apply in such a case.

The Chancellor: ''This principle does not apply to the present case.

The judgments mentioned in these proceedings were not entered within the period prescribed by law.''

Grimshaw vs. Wilmington, 5 Del. Ch. 183 at 186. (yr. 1877)

(In the absence of such a statute the equitable doctrine mentioned has force.)

(The statute of limitations on sealed instruments, generally, is 20 years.)

In the case below mentioned, the Court held that where a State Treasurer appointed one to help him to collect money, he was not merely the agent of the State Treasurer, but a public officer, and the statute of limitations relative to collectors of State taxes applied.

State Treas. vs. Whitaker et al, 2 Har. 136 at 137. (yr. 1836)

Moneys. Where deposited.

SEC. 34. All moneys belonging to the city which shall come into the hands of the City Treasurer, shall be by him deposited, every day, in some incorporated banking institution or institutions to be designated by Council, in the name of ''The Mayor and Council of Wilmington,'' generally, except in the case of money-proceeds arising out of a bonded debt authorized by the General Assembly for a specific purpose or use, in which case such money-proceeds shall be deposited in the name of The Mayor and Council of Wilmington for the special purpose or use for which the debt was authorized and shall only be drawn out for such special purpose or use. All moneys so deposited shall be drawn out only on an order signed by the President and Clerk of Council, and countersigned by the City Auditor and City Treasurer, or in case of the absence or temporary disability of either, then by such person as the Council may designate by resolution, and the others.

How drawn out.

City Treasurer to furnish itemized statement of moneys received.

SEC. 35. The City Treasurer shall furnish to the Council, at each stated meeting, an itemized statement of all moneys received by him during the period between such stated meeting and the one immediately preceding, together with the aggregate amount paid out of the city treasury during said week and the balance remaining therein at the time of making said statement. If the City Treasurer shall pay any money out of the city treasury contrary to the provisions of this act, he shall forfeit and pay to the corporation, for every such offense, a fine of five hundred dollars, and he and his sureties shall be liable to the city upon his official obligation for any money so paid out by him.

Penalty.

Fine.

City Treasurer. Duties of.

SEC. 36. The City Treasurer shall perform such other duties (*a*) as are hereinafter prescribed by this act, or by such ordinance or ordinances as Council shall from time to time enact, and which are not inconsistent with the provisions of this act. The Council may enforce by suitable penalties any duties enjoined by this act or by such ordinance or ordinances aforesaid, except where penalties are provided by this act.

(*a*) A duty not prescribed, but which would seem to follow from the office, would be to make the affidavit required by law, in suits brought by the city. This was done by the City Treasurer in 1853, and,

It was "objected that the affidavit was made by the Treasurer of the city corporation, and there was no provision in the law that this officer should swear in this respect for the corporation.

The Court assented to this."

Mayor and Council Wil. vs. Hedges & McClung, 5 Har. 421 at 422. (yr. 1853)

(Sec. 4, p. 790 Rev. Code says, "the affidavit of the cashier or *Treasurer* shall be sufficient in this Section." It thus becomes his duty.)

CITY AUDITOR.

Act of March 25, 1907. 24 D. L., 346.

City Auditor.

Act of March 25, 1907. 24 D. L., 356.

Term.

[SEC. 37. On the third Wednesday in July, A. D. 1907, and at the same time in every [second] (*a*) year thereafter, the Mayor shall appoint a person to discharge the duties of City Auditor, who shall hold office until his successor is duly appointed and qualified. (*b*) The term of office of said City Auditor shall commence on the first day of August next succeeding his appointment. On and after the first day of August, A. D. 1907, the City Auditor shall appoint a Clerk for his office, to be known as City Auditor's Clerk, who shall hold office at the pleasure of the City Auditor, and perform such duties as shall be required of him by said Auditor. The power and authority of the City Auditor's Clerk may be increased by ordinance of the Council. The City Auditor shall have power and authority to discharge said Clerk at any time, and his acts in this regard shall not be questioned. Such Clerk shall receive a salary of Nine hundred dollars per year,[1] payable in same manner as other city officers are paid. The Council shall have power by

Clerk of City Auditor.

Salary.

1. Salary, now, is $1200 per year. See ordinance July 25, 1908, this volume. See also Sec. 31, p. 60, at "Third."

ordinance to increase such salary at any time.]

(*a*) In reference to the word "second," see note "a," Section 6, of the Charter.

(*b*) Note the phrase, "*until* his successor is duly appointed and qualified," not just for "two years." This permits him to hold over in case of a void election.

Bond.

SEC. 38. The City Auditor, before entering upon the duties of his office, shall, with sufficient surety or sureties, become bound to the city by a joint or several obligation, (*a*) to be with surety or sureties therein, approved by the finance committee, with a condition therein for the faithful performance of his duty; and shall, so often as the Council shall direct, make return to the City Treasurer, under oath or affirmation, of each item of the moneys received by him, and immediately pay the amount in his hands to the City Treasurer.

Return to City Treasurer, and payment of moneys received.

(*a*) The word here used is "obligation." It has the same meaning as bond. As to the phrase "before entering upon the duties of his office," see Section 11, "a" of the Charter.

Duties of Auditor defined.

SEC. 39. The duties of the City Auditor shall be such as are prescribed by this act, or as the Council shall, by ordinance not inconsistent with the provisions of this act, from time to time prescribe, and Council may enforce the same by suitable penalties. Among his other duties the City Auditor shall examine all bills against the city and indorse them as correct before they are presented to Council for payment. He shall also examine and countersign all drafts or orders upon the City Treasurer before they shall be paid, and withhold his signature in case the draft or order is made without sanction of law, without any appropriation therefor by Council regularly made, is drawn against a wrong fund, or with any circumstances of fraud actually or presumably attached thereto; in all of which cases he shall report his action and the grounds therefor to Council at its ensuing meeting. Council shall thereupon duly carefully and publicly consider the case, and shall sustain or overrule his action by a direct vote by yeas and nays upon the question; whereupon it shall be the duty of the City Auditor, in case he shall be overruled, to countersign the said draft or order, in which case he shall be exonerated from all imputation or responsibility in the premises.

Duty of City Council.

CITY SOLICITOR.

Act of March 25, 1907. 24 D. L., 349.

City Solicitor. How chosen.

Act of Mar. 25, 1907. 24 D. L. 357. Act of Mar. 11, 1909. 25 D. L. 306.

Qualification.

Salary.

Assistant City Solicitor.

Salary.

Powers of City Solicitor.

[SEC. 40. On the first day of July, A. D. 1907, and at the same time every [second] (*a*) year thereafter, the Mayor shall appoint a City Solicitor who shall hold his office for the term of two years and until his successor is duly appointed and qualified.(*b*) The person so appointed City Solicitor must be an attorney and counselor of the Superior Court of the State of Delaware, who shall have been admitted to practice therein at least [three] years prior to his appointment, and shall also be a Solicitor in the Court of Chancery. The salary of the City Solicitor shall be Twenty-five hundred dollars per annum, payable in the same manner as other city officers are paid. The City Solicitor shall appoint an Assistant City Solicitor who shall hold office at the pleasure of the City Solicitor and perform such duties as shall be required of him by said City Solicitor. The City Solicitor shall have power to discharge said Assistant at any time, and his acts in this regard shall not be questioned. Such Assistant shall receive a salary of Six hundred dollars per year payable in the same manner as other city officers are paid. The Council shall have power by ordinance to increase his salary at any time. In addition to his other powers, the City Solicitor is hereby authorized to compel the attendance of witnesses and the production of books and papers at his office at any time, and to administer oaths and affirmations to witnesses at any time or in any place, for the purpose of securing information relative to his duties as prosecuting officer of the Municipal Court, and for violations of any laws or ordinances affecting or concerning said city. Subpoenas and attachments for the attendance of such witnesses and the production of such books and papers shall be signed by the City Solicitor and shall be served by any police officer. Any false answer or statement given in such a case shall be deemed perjury and punishable accordingly. The costs in such cases shall be paid by the Clerk of the Municipal Court in the same manner as the costs of proceedings in said court are paid.]

(*a*) See note "a," Section 6, of the Charter in reference to the word "second."

(*b*) Note the phrase "for the term of two years, and *until* his successor is duly appointed and qualified," not merely for "two years." This permits him to hold over in case of a void election.

SEC. 41. The City Solicitor shall be the legal adviser of all the departments of the government of said city and shall have charge of all the legal business thereof, and no fees shall be paid by any of said departments for any legal services to any person who shall have been employed, without the approval of said City Solicitor. The said Solicitor shall perform such duties as are prescribed by this act and by such ordinance or ordinances as Council shall from time to time enact, and which are not inconsistent with the provisions of this act, and Council may enforce the performance of said duties by suitable penalties, except where penalties are provided in this act. Duties.

CITY CONSTABLES.[1]

SEC. 42. * * * * * * * * * * * * * * *

The High Constable and the other City Constables shall assist the Mayor in carrying into effect the ordinances of the city, and shall perform all such duties as may be prescribed by Act of the General Assembly, or by the ordinances of the city. They shall possess like powers within the County of New Castle as are possessed by the Constables of the County. Duties of Constables.

SEC. 43. * * * * * * * * * *

SEC. 44. * * * * * * * * * * * * * * *

SEC. 45. The Mayor (*a*) may, upon any emergency, or apprehension of riot or mob, take command of the police force and appoint as many special Constables as he may deem advisable. During their service the special appointees shall possess the powers and perform the duties of other City Constables, and shall receive such compensation as shall be authorized by the Mayor, not exceeding that of the officers of the regular force performing corresponding duties. The Mayor shall have power to summon the *posse comitatus* for the preservation of Special Constables. When appointed. Duties and powers. Power of Mayor.

1. The power of appointment, discharge and control of the police force, as such, is now vested in the Board of Police Commissioners, by an Act entitled "An Act to provide for a Municipal Police Commission for the City of Wilmington," passed April 18, 1893. 19 D. L. 1000, p. 205 this volume.

the public peace and hold and employ such *posse* subject to his direction.[1]

(*a*) Note 1 to this Section is self- explanatory, and yet the act creating the "Board of Police Commissioners" would have been drawn more satisfactorily if it had *expressly* repealed the above Section 45.

The Act of 1891 took all powers from the Mayor and vested them in the newly created Board, of which the Mayor was a member, and the Act of 1893 took all powers from the old Board and vested them in the present Board of Police Commissioners.

Nicholson, Ch.: "The purpose and object of the Street and Sewer act was manifestly to take the whole subject matter of construction, and also the regulation, of the use of the streets, &c., from "The Council," just as the purpose of the Water Commission act was to take it away as to water, and of the *Police Board act as to the police.*"

Bullock's Admr. vs. W. C. Ry., 5 Penn. 209 at 217. (yr. 1905)

At the time of the above decision "The Council" had lost control of the police. "The Council" today fixes the number of the police force in that it cannot be increased without its consent, nor the salaries of the men increased. "The Council" may impeach the Police Commissioners. See p. 206 this volume.

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SEC. 46. * * * * * * * * * * * * * * *[2]

SALARIES AND FEES.[3]

Salaries of officers.

SEC. 47. The salaries (*a*) of the several officers herein provided for shall be fixed from time to time by ordinance, payable monthly, and shall not be less per annum than the following amounts, respectively:

Act of March 25, 1907. Mayor—Two thousand dollars.

Judge of Municipal Court—Fifteen hundred dollars.

President of Council—Two hundred dollars.

Ord. July 25, 1908. Clerk of Council—Fifteen hundred dollars.

Act of March 25, 1907. City Solicitor—Twenty-five hundred dollars.

City Treasurer—Twelve hundred dollars.

Ord. July 25, 1908. City Auditor—Fifteen hundred dollars.

1. See Secs. 1 and 4 of the above police commission Act. These sections seem to render Sec. 45 void.

2. Supplied by Sec. 7 of the above Act.

3. Council shall have power and authority to fix the salaries of all officers and employees paid by said Council. Act of March 25, 1907. 24 D. L., 352. Sec. 31 of the Charter, p. 60, at "Third."

Chief Engineer of the City—Two thousand dollars. Act of April 20, 1883.

Clerk of the Municipal Court—Twelve hundred dollars. Ord. July 25, 1908.

Each Member of Board of Health—One hundred dollars.

Each Executive Officer of Board of Health—Nine hundred dollars. Ord. April 15, 1907.

Registrar of Deaths, Births and Marriages—Eight hundred dollars.

[The President of the Council, Chairman of the Finance Committee and the Building Inspector, each one hundred and fifty dollars ($150), for their services as members of the Board of Assessment, Revision and Appeals.] Act of April 12, 1887. 18 D. L., 348.

(*a*) "The salary or fees of an officer of a municipal corporation may ordinarily be recovered as other debts by an action at law, but such an action cannot be maintained for salary during time not in possession by one claiming the office while there is a de facto incumbent, until the right to the office has been adjudicated in a proper proceeding to try the title."

Lee vs. Wilmington, 1 Marv. 65. (syllabus) (yr. 1894)

* * * * * * * * * * *

Member of Council—$1 for each meeting of Council, and fifty cents for each committee meeting he shall attend, and the chairman of each committee shall keep a record book in which he shall enter the attendance of all members of the committee of which he is chairman, and report the same monthly to the Clerk of the Council. [*Provided, however,* that no member of Council shall receive as compensation for his attendance and services in any one month a greater sum than twenty dollars; but this proviso shall not apply to or affect the extra salary of the President of Council as such, or the extra salary or allowance of the Chairman of the Finance Committee of Council, or of the Chairman of the Public Buildings Committee of Council as such, or the extra salary or allowance of the President of Council, or the Chairman of said Finance Committee for their services as members of the Board of Assessment, Revision and Appeals.] Proviso. Act of April 19, 1889. 18 D. L., 886. Salary.

The salaries of officers of the city, other than those above designated, shall be established by ordinance; but the Council shall not have power to augment (*a*) or reduce (*b*) the salary of Not to be increased or decreased during term of officer.

Proviso.

any officer for and during the period for which he shall have been elected or appointed; *provided*, that with respect to any person who may be in office at the time of the passage of this act, the Council may, if the sum herein named shall be deemed by said Council inadequate as compensation for the duties herein or hereafter imposed upon any officer, increase any of said salaries by ordinance passed prior to the first day of September next ensuing the passage of this act.[1]

(*a*) Sec. 31, p. 60, at "Third," gives "The Council" the power to "fix" salaries. This is under a law which was passed in 1907; the above section was passed in 1883. Under this later act the Council has "augmented" the salaries of officials during their term of office. Art. 15, Sec. 4 of the Constitution of 1897 has no prohibition against "increasing" salaries of officers during their term of office.

(*b*) What right "The Council" would have under the Act of 1907 (its power being to "fix" salaries,) to "reduce" them during one's term of office, has not been decided. Art. 15, Sec. 4 of the Constitution prescribes that "no law shall diminish" one's salary or emoluments during office. The general doctrine is that constitutional provisions apply only to State and county offices and not to municipal offices. (See notes to Secs. 5 and 32 "b" of the Charter.) The Legislature can abolish all *city* offices at pleasure.

Saulsbury, Ch.: "All the agencies of the city * * can be abolished or changed, at the will of the Legislature, and even their functions terminated and assigned to other and different agencies."

Coyle vs. McIntire, 7 Houst. 44 at 98. (yr. 1884)

As to *State* offices, while the Court held that an officer's salary could not be "diminished" during his term of office because of the Constitution, yet it decided the Legislature could "abolish" the office, and recreate it the next instant with new incumbents. The Court also said:

Lore, C. J.: "It is well settled that offices created by the Legislature are entirely within legislative control; that the gift of such an office is not a contract. * * When an office is abolished the former incumbent has no right to compensation for the unexpired term. The salary is an incident of the office and dies with it," &c.

State ex rel. McVey vs. Burris, 4 Penn. 3 at 5. (yr. 1901)

No additional fees allowed.

No officer whose salary is fixed by this act, or by ordinance of said Council, shall receive any fees (*a*) or emoluments in addition thereto, except such fees as are provided in this act; but all fees or emoluments pertaining to said offices, except as aforesaid, shall be paid monthly by the persons receiving the same, to the City Treasurer for the use of the city, taking his receipt therefor, which sum so received shall be reported to

1. Council given power to fix salaries of all officers and employees paid by Council. See Sec. 31 of the Charter p. 60, at "Third."

the Council by said Treasurer at the next stated meeting of Council after the receipt thereof. *Provided, however,* that whenever any city official is called by city business outside of the city limits, Council shall allow to such city official his actual traveling expenses and such other reasonable compensation as may by Council be deemed proper. [Whenever the duties imposed on any city official are such as to make it necessary, the Council shall provide such city official a proper place or office wherein such duties may be performed, and shall provide for the necessary maintenance of such place or office.]

Act of April 17, 1885. 17 D. L., 905.

(*a*) These "fees or emoluments" as the law reads, are such as pertain to the office. Witness fees may be obtained for attending Court in behalf of the corporation.

Lore, C. J.: "they are public officers, and we do not see why they should be precluded from payment for their attendance upon this Court. * * This is * * a public corporation, where they are performing a public duty, and whether the person is the President or the Secretary, or whether he is only one of the Trustees, it matters not. * * They have no private interest in this action."

Taylor vs. Trustees Poor N. C. Co., 1 Penn. 247 at 248. (yr. 1898)

Duty of High Constable and keeper of city prisons.

SEC. 48. It shall be the duty of the High Constable of said city, or other person who may be the keeper of the prison cells in said city or in charge thereof, to receive and lock up and safely keep in said cells any person committed by any judgment or sentence of the Municipal Court of said city, or of any Justice of the Peace, resident of said city, for the violation of any of the provisions of the laws of this State, or of the provisions of this act, or of the ordinances of said city, for temporary confinement, until such person, committed as aforesaid, may be taken to the common jail of New Castle County[1] by the officer to whom such person may have been committed, and the actual costs for all meals, medical attendance and medicines furnished such person so committed as aforesaid by the said High Constable, or other person, keeper of said cells or in charge thereof, shall be paid by the Council, after an itemized bill thereof, verified by the affidavit of the person furnishing the same, audited by the City Auditor in the same manner as other bills against the said city are now paid, shall have been presented to the said city.

Expense, How borne.

1. Prisoners to be delivered to New Castle County Workhouse. See 21 D. L. p. 413, Secs. 3 and 4.

ELECTION WARDS AND DISTRICTS.

Wards and election districts. Act of April 21, 1887. 18 D. L., 363.

SEC. 49. The City of Wilmington shall be divided into [twelve] wards, as follows:

First Ward.

The First Ward shall consist of all that part of the city lying and being south of Sixth street, and bounded on the east by a line passing southerly through the middle of Market street extended to the southerly city line, and on the west by a line passing southerly through the middle of Washington street extended to the southerly city line.

Second Ward.

The Second Ward shall consist of all that part of the said city east of Market street and south of Third street.

Third Ward.

The Third Ward shall consist of all that part of the said city lying and being south of Sixth street and bounded on the east by a line passing southerly through the middle of Washington street extended southerly to the point of intersection with the middle of West Liberty street extended, on the west by a line passing southerly through the middle of Adams street to the point of intersection with the middle of West Liberty [street] extended, on the west by a line passing southerly through the middle of Adams street to the point of intersection with the middle of Maryland avenue, and having for its general southerly boundary a line commencing at the point of intersection of the middle of Adams street with the middle of Maryland avenue; thence, along the middle of Maryland avenue to its intersection with the middle of West Liberty street extended, southeasterly to its intersection with the middle of Washington street extended southerly.

Fourth Ward.

The Fourth Ward shall consist of all that part of the said city lying and being east of Market street and between Third street and Sixth street.

Fifth Ward. For extension of Ward limits see Sec. 1 of this charter as amended. pp. 21 and 28.

The Fifth Ward shall consist of all that part of the said city lying and being west of Market street and between Sixth street and Ninth street.

Sixth Ward.

The Sixth Ward shall consist of all that part of the said city lying and being east of Market street and west of Poplar street, between Sixth street and Brandywine river.

Seventh Ward.

The Seventh Ward shall consist of all that part of the said city lying and being west of Market street and between Ninth street and the northerly boundary line of the said city as established by an Act of the General Assembly, passed at Dover, March 7th, A. D. 1861.

For extensions of ward limits see Sec. 1 of this charter as amended. pp. 21, 25 and 28.

Eighth Ward.

The Eighth Ward shall consist of all that part of the said city lying and being east of Poplar street and between Sixth street and the Brandywine river.

Ninth Ward.

The Ninth Ward shall consist of all that part of the said city lying and being north of the northerly boundary line established as aforesaid.

For extensions of ward limits see Sec. 1 of this charter as amended. pp. 23 and 25.

Tenth Ward.

[The Tenth Ward shall comprise all that territory lying and being between Adams and Franklin streets and between Sixth and Linden streets.]

Act of April 21, 1887. 18 D. L., 363.

Eleventh Ward.

The Eleventh Ward shall consist of all that part of the said city lying and being within the following boundary lines, to wit: Beginning at the intersection of the middle of Linden street with the westerly city line; thence, along the middle of Linden street easterly to its intersection with the middle of Maryland avenue; thence along the middle of Maryland avenue, northeasterly to its intersection with the middle of West Liberty street; thence, southeasterly along the middle of West Liberty street extended to its intersection with Washington street, extended southerly; thence southerly along the middle of Washington street extended to its intersection with the present southerly city line; thence, by the said southerly city line northwesterly to its intersection with the center of the main roadway or tracks of the Philadelphia, Wilmington and Baltimore Railroad Company, and thence by the extended boundaries as described in Section 1 of this act to the cornerstone marking the city line at the intersection of Beech and

[See Act of April 21, 1887. 18 D. L. 363.]

Union streets, and thence northerly by the present city line to Linden street, the place of beginning.

Twelfth Ward.

[The Twelfth Ward shall comprise all that territory lying and between Franklin street and the easterly side of Greenhill avenue, and between Sixth street extended, and Linden street extended westerly to the easterly side of Greenhill avenue.]

For extension of ward limits see Sec. 1 of this charter as amended. p. 28. Act of April 21, 1887. 18 D. L., 364.

Wherever a street is named as a boundary in this section, the center or middle thereof shall be understood.

* * * * * * * * * * *

THE FISCAL CONCERNS OF THE CITY.

Publication of financial statement. Act of April 5, 1891. 19 D. L., 425.

SEC. 64. The Council, in the month of July in each year, shall publish, for three days, in [two] daily newspapers printed in the City of Wilmington, a summary of the fiscal concerns of said city for the previous year, setting forth the whole amount of the existing debt of the city, by certificate, bond, note, or otherwise, the rate and amount of interest paid and when payable, the purpose for which each loan was created, the date of the ordinance under which each loan was issued, the amount issued and the amount outstanding at the time of publication; also the whole receipts of the treasury for the same year, the sources from which derived, and the amount received from each source, and the total payments made during the year on account of the several appropriations.

Receipts.

Payments.

Fiscal year. Beginning.

SEC. 65. The fiscal year of the City of Wilmington shall hereafter begin on the first day of July. The Council shall, on or before the first stated meeting in May in each year, cause to be prepared and laid before them estimates of the probable revenue and expenses (a) of the city for the ensuing year, and an ordinance shall be passed at the last stated meeting in May of

Annual estimates of revenue and expenses.

[Note.—Sections 50 to 63 were repealed by Chap. 194, Vol. 18, Laws of Delaware, which was amended by Chapter 668 of that volume, and published as amended as Chapter 669. This latter Act was repealed by the Act entitled "An Act in relation to Municipal elections in the City of Wilmington," passed April 6, 1893, and amendments thereto. P. 397 of this volume.]

each year making appropriations for the expenses of the ensuing fiscal year, based, as nearly as may be, upon the said estimates, and the appropriations shall be specified and arranged under the heads or items designated in the said estimates. Annual appropriation ordinances.

(*a*) This question of "revenue and expenses" involves the great power of taxation. The Council's power in this respect has been expressed as follows:

Comegys, C. J.: "And in order to enable it '(the city)' to execute the trusts of its creation in a complete manner, for the welfare of all, there has been conferred upon it the sovereign power of taxation, by which, for legitimate public purposes, exactions to any proper extent may be made upon its citizens and their property to supply the treasury with all necessary money for its exigencies."

Anderson & Son vs. Mayor and Council of Wil., 8 Houst. 516 at 526. (yr. 1889)

(The Sinking Fund Act, and the provision that the debt of the city shall not exceed 10 per cent. of the assessed valuation of real estate of the city, are limitations upon this otherwise open power.)

[The expenditures for the year under any head or item of appropriation, shall not exceed such head or item of appropriation, and upon any such item or head of appropriation becoming exhausted, then all expenditures under such head or item shall cease, and it shall not be lawful to pass any ordinance or resolution, to transfer to said exhausted item or head of appropriation, from any other item or head of appropriation, except such transfer be first approved by the Finance Committee and ordered by two-thirds vote of the Council, nor shall it be lawful at any time to charge bills belonging to one item or head of appropriation to any other item or head of appropriation. *Provided, however*, that should some extraordinary occasion occur, not anticipated at the passage of the general appropriation ordinance, and further provision be required in addition to the appropriations to be made at the last stated meeting in May, as aforesaid, an ordinance may be introduced making such further provisions and setting forth the extraordinary occasion for the same. Such ordinances shall, after having had two readings, be referred to the Finance Committee, who shall report on the same at the next stated meeting. Should such ordinance receive, endorsed upon it, the approval of the Finance Committee, or a majority of said committee, then such ordinance shall be immediately put upon its final passage, and such ordinance shall not pass unless the

Act of April 9, 1885, 17 D. L., 886.

Expenditures under any head or item shall not exceed appropriation for such item.

Proviso.

Extraordinary appropriation.

Two-thirds vote required.

same shall receive a two-thirds vote of all the members of "The Council," which vote shall be taken by yeas and nays and shall be entered upon the journal.] (a)

(a) This provision reads "such ordinance *shall not pass*, &c. * * "which vote shall * * be entered upon the journal."

This provision would seem to be mandatory, and even though it received a two-thirds vote of "The Council," as a matter of fact, yet if this fact be not shown "upon the journal," it may be a nullity.

See Sec. 65, par. 2, "d," of the Charter.

No payments except by appropriations.

SEC. 66. No money shall be paid from the treasury unless the same shall have been appropriated as aforesaid, (a) and unless the order or draft for the payment of the same shall show upon its face the head or item of appropriation against which it shall be drawn; except in the case of money-proceeds arising out of a bonded debt authorized by the General Assembly for a specific use or purpose, in which case the order or draft for the payment of the same shall show on its face the fund against which it is drawn, and the specific use and purpose for which the same was created, and in the latter case the money shall be drawn upon the resolution of Council, countersigned as in other cases.

Exception.

(a) This evidently means two things, 1st, no money shall be drawn from the treasury unless there has been an appropriation for it; and 2nd, this money shall be for municipal purposes. Art. VIII, Section 8 of the Constitution reads as follows:

"No * * city * * shall lend its credit, or *appropriate* money to * * any private corporation or any person or company whatever."

(See Sec. 31, paragraph four, "a," of the Charter.)

Extraordinary appropriation. How paid.

SEC. 67. Whenever any extraordinary appropriation shall be made by the Council, the amount so appropriated shall be paid out of the taxes, rents, or receipts of the fiscal year then current, if the same shall be sufficient; and in case the amount of any extraordinary appropriation shall be in excess of the taxes, rents, or receipts of the city for the fiscal year in which such extraordinary appropriation shall be made, such excess shall be provided for and included in the appropriations made and taxes levied for the succeeding fiscal year. To meet any extraordinary appropriation under this section, the Council may temporarily borrow from the banks, or other sources, such sums as may be needed for such purpose without incurring the penalties provided for under Section 71 subsequent.

Temporary loan.

SEC. 68.[1] * * * * * * * * * * Repealed by Act of April 7, 1909. 25 D. L. 315.

* * * * * * * * * * * *

SEC. 69. The Clerk of the Council shall publish, in two newspapers of said city, a copy of the ordinances making appropriations for the year, together with the estimates for the year, immediately after such ordinances are passed, and in like manner a copy of any ordinance making additional appropriations; and for default in the performance of this duty he shall forfeit and pay a fine of fifty dollars. Publication of appropriation ordinances.

SEC. 70. Upon all questions before the Council touching the borrowing of money, the vote shall be by ayes and noes, and shall be entered upon the journal; but The Mayor and Council of Wilmington shall not have power or authority to borrow money for any purpose whatever except in such cases as are or may be expressly authorized by law. Ayes and noes on borrowing money.

SEC. 71. (*a*) The funded debt of said city shall not exceed the sum now authorized by law (*b*) except [In the manner following: The Council, by ordinance, may borrow money and issue negotiable bonds to secure the same, in the name of The Mayor and Council of Wilmington, to an amount, inclusive of the present bonded debt, not exceeding in the aggregate ten per centum of the assessed value of the real estate of said city, such value to be based on the City Assessment last preceding the borrowing of said money; provided said ordinance be passed by a vote of a majority of all the members elected to the Council, and be approved by the Mayor. Should such ordinance be vetoed by the Mayor, then and in such case said ordinance may be passed over said veto by a vote of two-thirds of all the members elected to the Council; provided that when the sum to be borrowed shall exceed Fifty thousand dollars in any one fiscal year, said ordinance shall not be operative until approved by a majority vote of the votes cast by the qualified electors at the Extent of limitation in borrowing. Act of March 25, 1907. 24 D. L. 350. Two-thirds vote necessary to pass ordinance over Mayor's veto. Proviso. When ordinances to be approved by vote of people.

1. For appropriations to Fire Companies in force prior to April 7, 1909, see Appendix. For authority to make contracts with Fire Companies see page 553 of this volume.

city election subsequent to the passage of said ordinance, or at a special election to be held expressly for said purpose in such manner as the Council shall by ordinance direct. The qualifications of the voters at such special election shall be the same as required of voters at the preceding general city election; and the qualification to vote on such ordinance at any general city election shall be the same as other qualified voters at such election. The said Council, however, is hereby given express authority, to borrow, in any one fiscal year, for such municipal purpose or purposes as it shall deem proper, a sum not exceeding Fifty thousand dollars, by ordinance passed by a vote of two-thirds of all the members elected to the Council. Should such last mentioned ordinance be vetoed by the Mayor, then it may be passed over his veto by a vote of three-fourths of all the members elected to the Council, and it shall not be necessary to hold any such special or general election therefor. The sum so borrowed shall be secured by the issue of negotiable bonds in the name of The Mayor and Council of Wilmington. Such power to borrow any sum or sums not exceeding in the aggregate Fifty thousand dollars in any one fiscal year shall not affect, or be affected by the provisions of any section of the Charter other than the said Section 71, and such power in particular, shall be no limitation upon any existing provisions in the charter or laws of the municipality, or special acts of the General Assembly of the State of Delaware, inclusive of those passed at the present session of the General Assembly, relative to the borrowing of money by The Council, and The Mayor and Council of Wilmington. The provisions of this section shall not apply when it may be necessary to borrow money to refund or redeem city bonds which may, from time to time mature, but in such cases the Council may borrow money to refund and redeem the same, by ordinance passed by vote of a majority of all members elected to the Council, and such ordinances need not be approved by the Mayor. All moneys borrowed under the provisions of this section shall be paid off in accordance with the plans or provisions of the Sinking Fund Act, or in the manner prescribed by ordinance authorizing the

Council may borrow $50,000 in any one year.

Vote necessary to adopt ordinances.

City to issue bonds.

This special power to borrow not to affect other authorization.

Nor affect refunding present issue.

Money so borrowed, how to be used.

borrowing of said money. But this act shall in no wise be construed to amend or repeal,

"An Act to authorize The Mayor and Council of Wilmington to borrow money for the curbing, guttering, grading, widening, paving and improving of the streets and avenues and the building of sewers and conduits in the City of Wilmington, Delaware," approved March 4th, 1907] and the said funded debt being so limited, (c) The Mayor and Council of Wilmington, or the Council of Wilmington, shall have no power or authority, to borrow money, or contract or create any debt or liability, or to make any ordinance for borrowing money or contracting or creating debt or liability, (except ordinary debts and liabilities in the common course of carrying on the work and business of the said city, to be paid out of the taxes, rents, or receipts of the year for the time then current,) and if the said debts and liabilities shall not be so paid, the same shall bind the members of Council for the time then being, personally, other than those shown by the journal of the Council to have been absent or to have voted in the negative when the ordinance, order, or proceeding under which the debt or liability arose was passed, or had, making them jointly and severally responsible; and any member of Council who shall vote to borrow any money, or contract any debt or liability contrary to the provisions of this section, shall be deemed guilty of dereliction in duty and shall thenceforth be deemed and be incapable of holding any office of honor, profit or trust under this act or created by or existing under any law of the State of Delaware.

Personal responsibility of members of Council.

(*a*) A decision of the Court would be useful in ascertaining the clear meaning of this important Section.

(*b*) The object of this provision was, and is, to make "The Council" meet the expenses of a fiscal year out of the revenues of that same fiscal year, and not add to the funded debt of the city. In the year 1873 The Council was about to purchase park lands and pay for them partly in cash, and the balance by obligations covering a period of 8 years. A restraining order was obtained and the matter was dropped. "The legal ground" upon which objection was made was: "The creation of the debts and liabilities for the purchase of such lands was in violation of the express provisions of the Charter of the city, and the supplements and

amendments to the same *limiting the amount of the debt* of said city which might be lawfully created, contracted or incurrred by it.''

Attorney General vs. Wil., 4 Del. Ch. 575 at 579. (yr. 1873)

(This reference clearly refers to the above Section.)

(*c*) This Section was held applicable to the Water Department in the case below cited, and the Court said:

Grubb, J.: ''Section 12'' (of the Water Department Act) ''was enacted in contemplation of, and in accord with, the following provision of Section 71 of the Wilmington City Charter of 1883: ''The funded debt of said city shall not exceed the sum now authorized by law,'' &c. (quoting about one-half of said Section). ''Hence, the purpose of Section 12 was to relieve the Board, as the agent of the city, of this limitation of said Charter provision,'' &c.

Weldin vs. Wilmington, 3 Penn. 472 at 483. (yr. 1902)

Regular diminution of debt until whole is discharged.

Proviso.

Calamity to City Hall or Water Works.

Authority to borrow to replace property.

Sec. 72. When any part of the said funded debt is redeemed, there shall not, on that account, be any addition to said debt on any pretense whatsoever unless authorized by the General Assembly, but the said debt shall decrease, by regular diminution under such redemption, until the whole shall be discharged. *Provided*, that if, through calamity or casualty, the City Hall, or the Water Works, (*a*) or any part thereof, shall be destroyed, or injured beyond the available means or ability of the city treasury at the time to repair or replace, The Mayor and Council of Wilmington, under authority of an ordinance of the Council to be passed with the concurrence of three-fourths of all the members, shall have power to borrow, on temporary loan, a sum to be specified in such ordinance for repairing or replacing the property or work injured, or making a suitable substitute therefor, which sum shall be applied to that purpose and no other, and shall be payable in such time, times, or manner, as the ordinance shall prescribe.

(*a*) See note "c" paragraph 2 of Section 71, in which it is shown that the sinking fund provision applies to the Water Department.

ASSESSMENT AND COLLECTION OF TAXES.

Board of Assessment.

Sec. 73. The President of ''The Council,'' the Chairman of the Finance Committee of the said Council together with

[the Building Inspector of the City of Wilmington shall constitute the board of assessment, revision and appeals.] (a) Act of April 12, 1887. 18 D. L. 348.

(a) This Board exercises three separate and distinct functions:
It is a Board of Assessment till the assessment is completed—Jan. 2nd;
It is a Board of Revision from Jan. 2nd till Feb. 20th;
It is a Board of Appeals all during the month of April;
And lastly, it may assess property that has not been assessed up until the day of the city election. Secs. 81 and 82.
It has charge of the school assessment. Sec. 83.

* * * * * * * * * * * [See Act of April 17, 1885. 17 D. L. 901.]

Powers of the Board.

SEC. 76. The said board of assessment, revision and appeals, or a majority of them, shall determine and do any of the acts hereinafter mentioned.[1] They shall exercise a general and supervisory power over the Assessors and Collectors for the city, and shall cause them to make a faithful, full, fair and complete assessment of all the property in their respective districts liable to taxation, as hereinafter provided. The said Board may adopt such rules (a) and regulations as they may deem expedient to produce fairness, equality and completeness of assessments, and shall have full power, at any time, to examine the assessments while the Assessors and Collectors are making them, and cause them to be conformed to such rules and regulations as the said Board may have adopted in the premises.

(a) A "rule" has a well defined meaning, as has also an "order;" one is general, the other specific. An "order" is not a "rule."
Wolcott, Ch.: "A rule to be valid must be general in its scope, and indiscriminating in its application."
Morris et al vs. Pilot Coms., 7 Del. Ch. 136 at 137. (yr. 1894). Syllabus.

Assessors and Collectors, election of. Act of March 25, 1907. 24 D. L. 346. Act of March 25, 1907. 24 D. L. 356.

SEC. 77. [There shall be elected, at the city election in the year 1907, and in every [second] (a) year thereafter, two Assessors and Collectors for the City of Wilmington for the term of two years each, one of whom shall reside in and be voted for] and elected in and for that portion of the city north of Sixth street, the other one in and for that portion of the city which lies south of Sixth street. Whenever a street is named

1. For additional duties see 21 D. L. 244 at page 487 this volume.

as a boundary in this section, the center thereof shall be understood. The Assessors shall be also the Collectors (b) of the city for their respective districts, and as such shall give bonds as provided in Section 97 of this act. A failure to elect by reason of two or more persons voted for, for the office of Assessor and Collector having a legal and at the same the highest number of votes for such office shall be deemed a failure to hold an election, as to such officer, and thereupon the City Council at its next meeting shall elect such officer.

Bonds.

In case of tie, City Council to elect.

(a) See Sec. 6 "a" of the Charter.

(b) The wording of Sec. 3 of the Charter is "Two assessors who shall also be collectors." "Assessor and collector" is the same thing.

In a case, with a name of similar character, the Court said:

Lore, C. J.: "The words 'Receiver of Taxes and County Treasurer' do not describe two distinct officers, but constitute the proper legal title of the person occupying one office, who is properly described * * as the 'Receiver of Taxes and County Treasurer,' constituting one office, one officer, with varied duties under the statute.' "

State vs. Lynn, 3 Penn. 316 at 335. (yr. 1901)

(The above title, then, would seem to mean "one office, one officer, with varied duties under the statute.")

Assessors' Clerks. Act of April 12, 1887. 18 D. L. 349.

[Each of the said Assessors and Collectors so elected may appoint to assist him in the discharge of the duties of his office, a clerk.(a) Said clerk shall always be under the direction and control of the Assessor and Collector, by whom he was appointed. Each of said clerks shall receive a salary of [one thousand dollars[1]] a year, to be paid upon warrants, authorized by said Council, drawn upon the treasury of the said city.]

Salary. Act of Feb. 14, 1907. 24 D. L. 368.

(a) These clerks are paid a salary by the city, and are public officers, but this is not necessary to make them such. A State Treasurer appointed one to help him collect the State taxes. The appointee defaulted. The Court held he was not a mere agent of the State Treasurer, but an officer of the law, and that the Statute of Limitations relative to collectors' bonds applied.

"*Black and Layton, Justices,* were of opinion that the collector's bond was barred in three years after the cause of action accrued; that is, as to the taxes, the time fixed by the warrant for the payment of them over to the State Treasurer."

State Treasurer vs. Whitaker et al, 2 Har. 136 at 137. (yr. 1836)

Freehold qualification.

SEC. 78. No person shall be elected an Assessor and Col-

1. See Ordinance of August 5, 1909, for appointment of two Clerks and fixing their respective salaries. Page 599 this volume.

lector as aforesaid, who shall not have been, for at least six months before his election, the owner of a freehold estate within the said city, the value of which according to the city assessment made next before his election, shall be at least five hundred dollars clear of all incumbrances.

Completion of assessments.

Collection of unpaid taxes.

Allowance for errors.

SEC. 79. The city assessment for tax shall be completed by the Assessors by the second day of January of each year, and the taxes collected by the thirty-first day of December in the succeeding year, to which time the authority of an Assessor and Collector whose term of office has otherwise expired may extend, for the purpose of collecting outstanding amounts; (*a*) and for any amounts remaining upon his duplicate uncollected at that time, and not sufficiently accounted for and allowed for errors, delinquencies or otherwise by the Finance Committee of the Council, the said Assessor and Collector and his sureties may be held accountable upon their bond. (*b*)

(*a*) This provision gives the tax collector a year and a half in which to collect the taxes on his "list" or duplicate. A law that would abolish the office of assessor and collector of taxes, merely, would very likely save him his rights under Sec. 79. The Act of April 28, 1891, "appointed" a "Receiver of Taxes and County Treasurer," and abolished the office of "County Treasurer and Collector of Taxes." The Court decided that "Said act did not take from an ex-collector of taxes the powers given him by previous statutes, to collect for two years after the date of his warrant, all uncollected taxes due on his duplicate."

The Court: "A construction which would deprive the late collectors of a right of such importance at the time their official bonds were given, must of necessity be a construction * * imputing incredible folly and injustice to the Legislature of the State."

Smith vs. Riding, 9 Houst. 233 at 269. (yr. 1891)

(*b*) This provision "extends" the authority of the assessor and collector for the purpose mentioned therein, and fixes liability thereafter. As to rights after said time, the case below cited may be useful.

Boyce, J.: "In considering this application" (mandamus) "we are confronted with a provision in the City Charter," as follows: * * "No tax herein provided for shall be collected after the expiration of one year from the date of the warrant or precept for the collection of the same." (470) This time having expired, the Court concluded: "And it is therefore now beyond the power of the collector to collect the same by process of law."

Road Coms. vs. New Castle, 2 Penn. 466 at 471. (yr. 1900)

Assessable property. Exception.

SEC. 80. All real estate (*a*) within the said city shall be assessed (*b*) except real estate belonging to the United States, the State of Delaware, New Castle County, or the City of Wilmington, cemeteries and burying grounds, churches and meet-

ing houses belonging to any religious society and used for public worship, *real estate owned and used for charitable purposes by the associations known as the "Trustees of the Home for Friendless and Destitute Children in the City of Wilmington," "Home for Aged Women," "Sisters of Charity,"*[1] and buildings owned and occupied by fire companies. [The Mayor and Council of Wilmington be and it is hereby given express authority to collect and receive annually from telegraph, telephone, water, electric light, gas, street railway and heat and power companies, operating within the City of Wilmington, the taxes hereinafter specified.

Assessment. How made.

Act of March 25, 1907. 24 D. L. 353.

(*a*) The "roadbed" of a railroad is real estate.

Saulsbury, Ch.: "The roadbed of the complainant" (P., W. & B. R. R. Co.) "is real property," &c.

P., W. & B. R. R. Co. vs. Neary, 5 Del. Ch. 600 at 605. (yr. 1886)

Grubb, J.: "That the said roadbed is included within the terms and operation of said Section 1 and is to be deemed 'real property' within the meaning of that term, as used in said section, must be conceded in view of the undeniable weight of authority in this country."

Neary vs. P., W. & B. R. R. Co., 7 Houst. 419 at 442. (yr. 1887)

(Sec. 1, above, relates to the county. It is similar to Sec. 80 of the City Charter.

(*b*) This provision is prospective and will always reach real estate within the city.

Spruance, J.: "It cannot be objected that * * would have left the territory covered by said act, without provision for taxation, as there was then in force a general law providing for taxation of real estate in the City of Wilmington (City Charter, Sec. 80)."

Monaghan vs. Lewis, 5 Penn. 218 at 224. (yr. 1905)

Railway Company.

(a) From all persons, firms, associations or corporations owning or operating any street railway within the limits of the City of Wilmington the sum of two hundred and seventy dollars per mile of single track (*a*) owned or operated by each of such companies; *provided, however,* that the said tax shall not be collected from both the owner and the operator of any such railway company.

(*a*) The language is "per mile of single track." In the case below cited the Court construed the phrase,—

"length of the Philadelphia, Wilmington and Baltimore Railroad within

1. Matter in italics no longer exempt under this section by reason of Sec. 1, Article 8 of the Constitution. See Monaghan vs. Lewis, 5 Pennewill 218.

the State,'' to mean the length of the main or trunk line, without reference to the ''lateral or branch lines.''

Herbert vs. B. & P. R. R., 8 Houst. 120. (yr. 1888)

Gas Companies.

(b) From all persons, firms, associations or corporations owning or operating any gas company within the limits of the City of Wilmington the sum of sixty dollars per mile for each mile of the streets of said City used by such gas company for its gas mains; (a) *provided, however*, that the said tax shall not be collected from both the owner and the operator of any such gas company.

(a) See note to paragraph ''c'' of this Section.

Electric Light Company.

(c) From all persons, firms, associations or corporations owning or operating any electric light company within the limits of the City of Wilmington the sum of one hundred dollars per mile for each mile of the streets of said city used by such electric light company for its poles (a) and wires overhead; *provided, however,* that the said tax shall not be collected from both the owner and the operator of any such electric light company.

(a) These taxes go to ''The Council'' for the use of the city, and not to the Street and Sewer Department.

Lore, C. J.: ''There was also a second suit brought by the same plaintiffs against Isaac C. Pyle, City Auditor for the City of Wilmington, being No. 221 to the May Term, 1900, which was a case stated, in which the same issue was raised concerning the taxes on electric light poles in the said City of Wilmington. * * After a very full presentation and discussion by counsel of the various statutes and ordinances bearing on the questions involved in the case, the Court, believing there were good reasons why a determination of the matter in issue should be had without delay, rendered its decision at the close of the argument, without delivering an opinion. Judgment was rendered in favor of the defendant in each case.''

Street and Sewer Dept. vs. Connell, 2 Penn. 571 at 572. (yr. 1900)

(Connell was Clerk of the Market, and was representing ''The Council.'' This case was taken to the Supreme Court and that Court affirmed the above decision.)

Telephone and Telegraph Companies.

(d) From all persons, firms, associations or corporations owning or operating any telephone or telegraph company business within the limits of the City of Wilmington, the sum of one hundred dollars per mile for each mile of the streets of said city used by such telephone or telegraph company for its wires and poles (a) overhead; *provided, however*, that the said

tax shall not be collected from both the owner and the operator of any such telephone or telegraph company.

(*a*) (See above note, paragraph "c.")

Underground conduits.

(e) From all persons, firms, associations or corporations owning or operating any electric light, telephone, or telegraph company within the limits of the City of Wilmington, the sum of sixty dollars per mile for each mile of the streets of said city used by any such company for underground conduits; *provided, however*, that the said tax shall not be collected from both the owner and the operator of any such electric light, telephone or telegraph company.

Heat, Light and Power Companies.

(f) From all persons, firms, associations or corporations owning or operating any heat, light or power company within the limits of the City of Wilmington the sum of sixty (*a*) dollars per mile for each mile of the streets of said city used by any such heat, light, or power company either for pipes, conduits or other underground construction, or poles, (*b*) wires, or other overhead construction: *provided, however*, that the said tax shall not be collected from both the owner and the operator of any such heat, light or power company; and *provided, further,* that any light company which uses the same system or material for furnishing heat, light and power shall not pay double taxes on the same construction.

(*a*) (Compare with paragraph "c" above as to "light" company.)

(*b*) (See note to paragraph "c.")

Water Companies.

(g) From all persons, firms, associations or corporations owning or operating any water company (*a*) within the limits of the City of Wilmington, the sum of sixty dollars per mile for each mile of the streets of said city used by any such company for underground pipes or conduits; *provided, however,* that the said tax shall not be collected from both the owner and the operator of any such water company.

(*a*) Could this provision, by implication, give a "water" company any rights in Wilmington, in view of the Water Department Act?

Said companies to file statements with Clerk of Council.

Every such person, firm, association or corporation as is hereinbefore mentioned in this section, shall on or before the

first day of April of each and every year, file with the Clerk of the Council of the said City of Wilmington a sworn statement which shall set out the following:

What to set forth in statements.

(1) In the case of every such person, firm, association or corporation owning or operating any street railway, setting forth the total mileage of single tracks of every such company within the limits of the City of Wilmington.

(2) In the case of every such person, firm, association or corporation owning or operating any telegraph, telephone, gas, water, electric light, or heat and power business, system, or plant, shall state the total number of miles of the streets of the City of Wilmington used by every such person, firm, association or corporation, overhead and underground, in its said business.

(3) In case of an individual, firm or association transacting any such business, said statement shall be verified by the oath or affirmation of any one of the persons, owning or operating the same; and in the case of every corporation owning or operating any such business, said statement shall be verified by the oath or affirmation of the Treasurer of every such corporation. Said taxes shall be due and payable to The Mayor and Council of Wilmington annually at the same time that the city and school taxes due said city are payable, and shall be subject to the same rebates, deductions, discounts, allowances and penalties as are now or hereafter may be provided by law in reference to such city and school taxes. The taxes provided for by this amendment shall be in lieu of and instead of all other taxes, licenses and revenue imposed, required or derived from any conduits, pipes, mains, ducts, wires, road-beds, tracks, ties, poles, (a) cables, lamps, lights and all other equipments, materials and apparatus belonging to any such persons, firms, associations or corporations, in, or placed in, on or over the streets of the City of Wilmington.][1]

1. Sec. 17. Act of March 25, 1907. 24 D. L. p. 355. Continues and reestablishes all the statutes of the State of Delaware relating to the City of Wilmington, not inconsistent with said Act.

The assessment of real estate shall be made according to a certain rate in and upon every hundred dollars of the estimated value of the property assessed, if sold for cash, and so *pro rata*. The real estate shall be described with sufficient particularity to be clearly identified, the principal improvements thereon, if any, to be also specified. Real estate, the owner or owners of which cannot be found or ascertained, may be assessed to "owner unknown." (*b*) Every male citizen above the age of twenty-one years shall be rated for a capitation or poll-tax (*c*) in addition to the assessments of his real estate, at a capital not exceeding [three thousand] dollars nor less than one hundred dollars; [to better enable said Assessors and Collectors to make said assessments they shall have the right to examine all records in the county office, kept at the Court House in the City of Wilmington in and for New Castle County free of all costs and charges.][1]

Poll-tax.

Act of April 16, 1885. 17 D. L. 899.

Access to County Records.

Act of April 12, 1887. 18 D. L. 349.

(*a*) See above note to paragraph "c;" and see Sec. 100 of the Charter.

(*b*) If the owner be not known the assessment may be so made but inquiry should be made to ascertain the owners of property.

Pennewill, J.: " * * we will say that it is the duty of the assessor to use care and diligence to discover the actual owner of the property to be assessed, and if the name of the owner is known to the assessor, or might be ascertained by him from the public records or other available sources of information, it is his duty to make the assessment in the name of the actual owner."

Knowles vs. Morris, 6 Penn. 76 at 79. (yr. 1906)

An assessment for sewer lien had been made "against the heirs of John Montgomery." The owners, (some of them,) were not said heirs.

The Chancellor: "Even if it be admitted * * that the City Council or Griffith acting under its authority, knew of the divisions of said land * there is no allegation and no proof * that the conveyances * * if any * * were matters of record which were noticed to Griffith or the City Council."

Murphy vs. Wilmington, 5 Del. Ch. 281 at 292-293. (yr. 1879)

Murphy vs. Wilmington, 6 Houst. 108 at 130. (yr. 1880)

(The Chancellor refused to grant a restraining order.)

(*c*) *Comegys, C. J.*: "The poll-tax was adopted 100 years, at least, before 1797." (See p. 8, paragraph "a," Borough Charter.)

Frieszleben vs. Shallcross et al, 9 Houst. 1 at 64-65. (yr. 1890)

Art. VIII, Sec. 5, of the Constitution makes provision for a capitation tax "from every male citizen of the State of the age of twenty-one years or upwards * * such tax shall be uniform throughout that

1. For classification of real estate and certain exemptions, see 21 D. L. 244 at page 487 this volume.

county * * and shall be used exclusively in the county in which it is collected.''

(That constitutional provisions, as a general rule, do not apply to municipal corporations, see Sec. 14 ''c'' of the Charter.)

Assessment delivered to Board of Assessment.

SEC. 81. The Assessors and Collectors shall complete the assessment for the said city in each year by the second day of January, on or before which day they shall deliver the same to the said Board of Assessment, Revision and Appeals for the City of Wilmington. The Board, upon receiving such assessment, shall forthwith examine it, with power to revise, alter, or add (a) any assessment on or before the ensuing twentieth day of [February.] After receiving said assessment the Board shall cause it to be filed in the office of the Clerk of the Council, who thereupon shall give public notice, by advertisements printed in two newspapers and posted in the most public places within the city, that such assessment, being completed, is filed in his office for public inspection, and also designating the time appointed by this act for the sitting of said Board for appeals. Such notice shall be continued until the time for sitting of said Board for appeals as aforesaid.

Alterations.

Act of April 12, 1887, 18 D. L. 348.

Filed in Clerk's office.

Notice.

(a) The phrase here is, ''revise, alter or add.'' In the case cited below the Court held that the phrases, ''correct and add to assessments returned,'' and, make ''additions to, and corrections of, the assessment list,'' did not give power to *strike* off names.

Biggs vs. Buckingham, 6 Del. Ch. 267 at 342. (yr. 1892)

Act of April 17, 1885, 17 D. L. 961.

SEC. 82. [The Board of Assessment, Revision and Appeals, for the City of Wilmington, as constituted in Section 73, preceding, shall sit at some public and convenient place in the City of Wilmington, on each secular day during the month of [April] in each and every year, from 2 P. M. to 4 P. M. and from 7 P. M. to 9 P. M. The said Board shall sit as provided in Section 73, preceding, to hear appeals from assessments and shall continue to sit during the above mentioned time, or so long as may be necessary to adjudge appeals.] Upon appeals (a) the said Board shall have power to alter (b) any assessments and to make additional assessments, and to determine and to do whatever may appertain to justice and right. Appeals may be filed in writing, in the Clerk's office, or made directly to the said Board. No appeal shall be received or heard, or adjudication of appeal made, nor shall the assessment list be altered

Act of April 12, 1887, 18 D. L. 348.

When the Board shall sit as such.

Additional assessments.

Hearing appeals.

Act of April 12, 1887, 18 D. L. 348.

Additions. When made.

or added to after the [thirtieth day of April.] *Provided*, that real estate not assessed by the Assessors and Collectors may be assessed by the said Board at any time before the day of the city election, previous notice of such intended assessment, designating the time at which the same will be made, being given by the said Board, in writing, to the owner or owners, or if he, she, or they, be absent from the city, then to the person or persons in possession of the premises. *And provided also,* that the said Board, at any time before the day of the city election, after the assessments shall be completed, upon the application of any person who was residing within the city before the completion of the assessments and was omitted therefrom, shall rate such person for a capitation or poll-tax, and shall thereupon cause his name to be added to the assessment lists. Real estate assessed, or persons rated as herein provided after the completion of the assessments, shall be so assessed or rated upon both the city and school assessment lists. Such real estate, or persons being so assessed or rated, shall thereupon be liable to pay taxes for the current year at the rate per centum which shall have been determined by the City Council (*c*) and necessary additions shall be made to the list provided for in Section 84 of this charter. The assessment books (*d*) or lists shall be the property of the city and shall be kept in the office of the Clerk of Council.

Notice to owners.

Additional poll-taxes.

Additions subject to both city and school taxes.

Custody of books.

(*a*) The Board's power to make changes under this provision seems to depend "upon appeals" made,—except it may make assessments, where none have been made, up to the day of the city election.

(*b*) See note to Sec. 81 (a) of the Charter.

(*c*) See note "a," Sec. 84, of the Charter.

(*d*) "All books and papers filed in the office of the Clerk of the Council touching the assessment * * of taxes, shall be open to the inspection of any person interested in the same." Sec. 85).

And they are admissible in Court, as against the city to prove property or value.

"Books of assessment are not evidence to prove property or value, except as between the county and the assessed."

Griffith and wife vs. Johnson's Admr., 1 Har. 136. (yr. 1833) Syllabus.

School assessment.

SEC. 83. To the end that the sums necessary to be raised for public schools in Wilmington may be assessed and collected by the same proceedings had for collecting the city tax and as constituting a part of the city tax, the said Board shall, as soon as the city assessments shall have been completed as aforesaid,

and before the thirtieth day of May in each year, cause to be made an assessment to be called the school assessment, which shall be made as follows, viz: the assessment of real estate within the city shall be taken from the assessment of real estate on the city assessment; and the assessment of personal estate (*a*) and persons, to wit: stock, plate and the rates for capitation or poll-taxes, shall be transferred from the assessment list of Wilmington Hundred standing in the Levy Court of New Castle County for the time then being. It shall be necessary to transfer amounts only, without specification or particulars. No appeals shall be taken from the assessment so made, and there shall be no variation of the assessments transferred; but if there be any person in Wilmington Hundred legally liable to be assessed for personal property, or rated for capitation or poll-tax, not found on the assessment list of Wilmington Hundred, the said Board may assess such person for personal property, and rate him for such a capitation or poll-tax on the school assessment as to law and right shall appertain, giving to such person due notice and opportunity to be heard.

How made.

No appeal.

(*a*) In 1897 the "Adams Tax Law" was passed (20 D. L., Ch. 381). This act provided for taxation of personal property for the State and County. In 1898 an amendment was made to it (21 D. L. Ch. 24) which provided that the City of Wilmington should receive one-half of what was collected in Wilmington, "the remaining two-fourths thereof shall be for the use of "The Mayor and Council of Wilmington." (Sec. 7.) Both acts were alike as to the title, and referred to "State and County purposes." The act was void because Art. 2, Sec. 16, of the Constitution provided that no bill should embrace more than one subject which should be expressed in its title, and the title did not disclose "the subject of municipal taxation."

The act provided for taxes upon "all investments paying interest or yielding an income which are not taxed for either State or County purposes or exempt from taxation."

E. G. & T. Co. vs. Donahoe, 3 Penn. 191 at 193. (yr. 1901)

This note is made to show how costly the mistake was to Wilmington. It has no bearing upon the above Section.

SEC. 84. The assessments being so settled as aforesaid, the said Board shall, on or before the first day of June, lay the same before the Council of Wilmington, who shall, without delay, determine the whole amount of money necessary to be raised for the use of the city by taxation (*a*) during the year of said assessment, and shall apportion (*b*) such amount among the several persons and estates assessed upon the city assessment, according to a certain rate in and upon every hundred dollars

Levying of city taxes.

Levying of school tax.

of the said assessment, and so *pro rata*. The Council shall also, at the same time, include the sum necessary to be raised for the use of the public schools of the said city by taxation during the year last aforesaid and shall apportion such amount among the several persons and estates assessed upon the school assessment, according to a certain rate in and upon every hundred dollars of the said assessment, and so *pro rata;* and the amount so apportioned shall be collected under the provisions hereinafter contained as other city taxes, and shall constitute part of the city taxes within all the provisions of law applicable to the same. [The Assessors shall, under the supervision of the Board of Assessment, Revision and Appeals, thereupon make out correct lists for each district of the city, showing the number of persons and estates assessed upon both of the aforesaid assessments, with the whole amount of tax laid upon the several persons and estates under the foregoing provisions, and the said lists, shall, on or before the fifteenth day of June, be delivered to the Clerk of Council, who shall immediately write thereon the warrants of said Council for the collection of said taxes, which said warrants shall be signed by the President of "The Council," and countersigned by the said Clerk, and the said lists and warrants thereon be re-delivered by the Clerk to the Assessors on or before the twentieth day of June; whereupon it shall be the duty of the said Assessors and Collectors to forthwith collect and receive the taxes thereupon. (*c*)

Act of Mar. 24, 1885. 17 D. L. 868.

Duty of Assessors.

Assessment to be completed by June 15.

Duty of Clerk of Council.

Warrants.

(*a*) Subject to the limitations contained in Sec. 71 of the Charter, "The Council" has sweeping powers as to taxation.

Comegys, C. J.: " * * to enable it" (the city) "to execute the trusts of this creation * * there has been conferred upon it the sovereign power of taxation, by which, for legitimate public purposes, exactions to any proper extent, may be made upon its citizens and their property to supply the treasury with all necessary money for its exigencies."

Anderson & Son vs. May. & Counc. Wil., 8 Houst. 516 at 526. (yr. 1889)

English vs. Wilmington, 2 Marv. 63 at 85. (yr. 1894)

Frieszleben vs. Shallcross et al, 9 Houst. 1 at 99. (yr. 1890)

(*b*) *Grubb, J.*: "The second essential is, that apportionment of taxes should reach all the objects of taxation within its limits."

Frieszleben vs. Shallcross et al, 9 Houst. 1 at 99. (yr. 1890)

(The above case (pp. 99-106) is instructive on the subject of taxation.)

(*c*) This Section concludes the assessment (it begins with Sec. 80)

and places the "lists" or duplicate in the collector's hands for collection. Care should be taken that every requirement has been followed.

Grubb, J.: "It is, moreover, essential to valid taxation that the taxing officers be able to show legislative authority for the burden they assume to impose, in *every instance.*"

Frieszleben vs. Shallcross et al, 9 Houst. 1 at 100. (yr. 1890)

Wales, J.: "If a city ordinance imposes certain conditions which must be complied with in order to make a legal tax, the failure to comply with *anyone* of the conditions renders the tax void."

Murphy et al vs. Wilmington, 6 Houst. 108 at 136. (yr. 1880)

Curry vs. Jones et al, 4 Del. Ch. 559 at 566. (yr. 1872)

[The said Assessors and Collectors shall be paid the sum of two hundred and fifty dollars ($250) each for making out the lists aforesaid, to be paid upon warrants authorized by said Council to be drawn upon the treasury of the said city.] Act of April 12, 1887, 18 D. L. 319. Compensation of Assessors.

Sec. 85. At the request of any person paying a tax which has been assessed upon his person or property, the Assessor and Collector shall make out and deliver to him a bill; (*a*) showing, in addition to the amount of tax, how much of it is laid upon his person and personal property as shown by the school assessment list, and how much of it is laid upon his real estate, and if it is laid upon more than one parcel of real estate, then how much of it is laid upon each parcel, describing each parcel according to the description thereof appearing upon the city assessment list. All books and papers filed in the office of the Clerk of the Council touching the assessment, receiving or collection of taxes, shall be open to the inspection of any person interested in the same. Bill and receipt for taxes. Assessment books may be inspected.

(*a*) This provision says, upon payment of tax, the assessor and collector "shall make out and deliver to *him* a bill," &c.

Comegys, C. J.: "In regard to giving receipts for tax, * * the collector, as a matter of duty, is bound to give that; but it is a receipt to the taxable, and he has the power to decline to give into any but his hands."

Hawkins vs. Dougherty, 9 Houst. 156 at 176. (yr. 1890)

In regard to the *payment* of a tax (not the giving of a receipt for it): "A tax collector, having the right to collect taxes from the taxable himself, of which right, no court by mandamus, can deprive him, cannot be compelled to receive a principal's taxes from the hands of his agent or attorney in fact, but if he refuses taxes thus tendered him, and afterwards fails to collect them, he will be liable on his official bond for the amount thereof." id 156.

(The above related to poll taxes.)

Sec. 86. The Council shall have power, by ordinance, to enjoin upon the Clerk of Council and the Assessors and Collec- Additional duties of Clerk of Council and Collector.

tors any duties in addition to those in this act specified touching the assessment and collection of taxes which it shall deem necessary or proper for carrying into effect the provisions of this act touching and concerning the same, and may enforce, by suitable penalties, any duties so enjoined by this act or by such ordinance as aforesaid.

Liability of Collector and sureties.

SEC. 87. Upon the delivery to an Assessor and Collector of such lists, with the warrant of the Council to collect such taxes, he and his sureties, his and their executors and administrators, shall become and are hereby declared to be responsible for the whole amount of money which it shall be his duty to collect, (*a*) subject only to such just allowances as shall be made to him or them upon settlement with the Finance Committee, as hereinafter is provided.

(*a*) *Grubb, J.*: "It is, therefore, the undeniable duty of the collector to make diligent inquiry, and exhaust legal process, wheresoever effectual, in the effort to collect the tax of the citizen, before he shall return him * * as a delinquent," &c.
Frieszleben vs. Shallcross et al, 9 Houst. 1 at 103. (yr. 1890)
(See Sec. 94 of the Charter.)

When abatement of taxes allowed.

SEC. 88. All the city taxes, assessed as aforesaid, paid during the month of July shall be entitled to an abatement by the Assessors and Collectors of five per centum; all such taxes paid during the month of August shall be entitled to no abatement; all such taxes paid during the month of September shall be increased by the addition of five per centum to the amount thereof; taxes not paid until after the month of September shall be increased by the addition of five per centum to the amount thereof. (*a*)

(*a*) This reference to months means the months of the year in which the assessment is made, and it gives certain rights, regardless as to whether taxes are due for prior years or not. The tax collector cannot make the appropriation against the will of the person paying the tax.
Ridgely, Ch. ad lit. "The general rule of law as to the appropriation of payments is, that the debtor has the right, if he pleases, to make the appropriation; if he omits it the creditor may make it; if both omit, the law will apply the payments according to its own notions of justice."
Pickering vs. Day, 2 Del. Ch. 333 at 365-6. (yr. 1866)

Death of Assessor and Collector.

SEC. 89. If any Assessor and Collector die, or remove from the said city or district in and for which he shall have

been elected as aforesaid, or become incapable of performing his duties, the Council may, upon petition by the sureties of such Assessor and Collector, and being satisfied that it is a proper case for relief, appoint another person to collect the residue of the unpaid taxes, and may compel the delivery to such person of the list and warrant, or cause a new one to be issued to him, bond with surety being first given as required by this act from the original Assessor and Collector. And thereupon such other person so appointed, and his sureties, his and their executors and administrators, shall become responsible for the uncollected taxes, subject to allowances as herein provided. Such appointment shall not discharge the sureties of the first Assessor and Collector from any part of their original responsibility, but all sums collected by the substituted Assessor and Collector shall be credited to him. (*a*) All the powers, duties and liabilities of the first Assessor and Collector shall devolve upon the substituted Assessor and Collector and his executors and administrators upon final settlement with the Finance Committee as herein provided. The said Committee shall make a just apportionment between the original Assessor and Collector, or his representatives, and the substituted Assessor and Collector of the compensation allowed for the collection of taxes.

Vacancy. How supplied.

Settlement with representatives of deceased Collector.

(*a*) The provision that the substituted collector shall be credited with his collections is simply the general law, thus protecting sureties.

Ridgely, Ch. ad lit. "In instances of official bonds, executed by the principal, at different times, with separate and distinct sets of sureties, this Court" (Sup. Ct. U. S.) "has settled the law to be that the responsibility of the separate sets of sureties, must have reference to, and be limited by, the periods for which they respectively undertake, by their own contract, and that neither the misfeasance nor nonfeasance of the principal, nor any cause of responsibility occuring within the period for which one set of sureties have undertaken, can be transferred to the period for which alone another set have made themselves answerable."

Pickering vs. Day, 2 Del. Ch. 333 at 367. (yr. 1866)

SEC. 90. All taxes for city and school purposes which may hereafter be lawfully assessed on real estate in the City of Wilmington shall constitute a prior lien thereon [for the period of four years from the first day of July succeeding the assessment of said taxes] and may, with all incidental costs and expenses, be levied by sale thereof as hereinafter pro-

Tax lien.

Act of May 17, 1897. 20 D. L. 684.

vided. The said lien shall be fully paid and satisfied before any recognizance, mortgage, (a) judgment, debt, obligation or responsibility which the real estate may become charged with or liable to. * * * * * * * * * *

Act of April 12, 1887, 18 D. L. 350.

In case any dilatory or adverse legal proceedings, by or on behalf of any delinquent taxable against said Assessor and Collector, or against The Mayor and Council of Wilmington, should delay or prevent the collection of the tax beyond the thirty-first day of December in the succeeding year after its assessment, the lien of such tax on the real estate therein provided shall continue and be extended for a period of six months after the termination of such dilatory or adverse proceedings, or for so much thereof as may be necessary to complete the collection of said tax as provided for in Section 91 of this act.[1]

Lien transferred in certain cases.

Act of April 12, 1887, 18 D. L. 350.

[But in case of the sale under execution (b) process, of any real estate upon which such tax liens shall exist, such lien shall be transferred to the fund arising from such sale in the hands of the officer making the same, and the real estate so sold shall be discharged therefrom. *Provided*, that if such fund shall not be sufficient to pay and discharge the said tax lien by reason of the said real estate having been sold subject to another or other lien or liens created by said taxable, then the unpaid balance of said tax shall remain a lien upon the land so sold.

* * * * * * * * * * * *

(a) This Section in its priority of lien, payment and transfer of lien to the fund, in case of sale, is very similar to the county tax law.

Wolcott, Ch.: "These taxes" (county) "whether prior or subsequent to the mortgage and judgments, were by statute made paramount liens on the real estate * * from," &c. (258) "From what has been said it is manifest that * * the mortgage creditors had a first lien on the real estate, subject to the liens of the taxes," &c.

Lord & Polk Chem. Co., 7 Del. Ch. 245 at 259. (yr. 1895)

This Section says "Taxes * * shall constitute a prior lien thereon," and "The lien * * shall be paid * * before any * * mortgage," &c.

The county tax law is very clear, for it gives the lien priority even though the mortgage lien be of a date prior to the time "of the attaching of such lien for taxes."

In the case below cited, real estate was sold under a mortgage and

1. Amendment of May 17, 1897, supra, nullifies the parts of Section 90 in italics, p. 95 this volume.

converted into personalty. The county law required, if no personal property could be found, "to *levy* and collect such taxes from the lands," &c. The city has no such provision as the above. The land having been sold before a *levy* was made the Court decided the priority was lost.

"The statute * 1875, in relation to the lien of taxes provides that the lien * shall * * be paramount to all other liens. * * To secure this priority * * over the lien of a mortgage * * the tax should have been duly *levied* * on the real estate" before it was sold.

Rhoads vs. Given, 5 Houst. 183. (yr. 1876)

(*b*) The phrase here is "execution process" and the language above shows what it means. In the case cited below, the Court held that a sale of lands for county taxes did not affect city taxes or city liens (such as sewer, &c.) of any kind, and that they remain as in case of no sale.

Pennewill, J.: "It is not contended in this case that the said deed would vest in the defendant the real estate described therein, free from the lien or encumbrance of municipal taxes, even though the city in fact received notice of the sale," &c.

Knowles vs. Morris, 6 Penn. 76 at 79. (yr. 1906)

Goods and chattels may be sold for taxes.

SEC. 91. If any person, assessed as aforesaid, shall neglect or refuse to pay the sum which any Assessor and Collector shall be required to collect from him, or any part thereof, for ten days after demand made, the said Assessor and Collector shall levy and make the same by distress (*a*) and sale of the delinquent's goods and chattels, rendering the overplus, if any, after deducting reasonable charges, to the owner or owners thereof, or if no such distress can be found by the Assessor and Collector, the said tax may be collected from, or levied upon, the goods and chattels of any of his tenants, if such there be, who shall be allowed to set off the amount thereof against any demand for rent on the part of such delinquent landlord, or if there be not rent sufficient to cover the amount so paid or levied, it may be recovered by such tenants from the landlord, with costs. And if any grounds, buildings or estate belong to a minor or minors, or person or persons absent from the city, the tax laid upon the assessment of such grounds, building or estate may be collected from the person or persons having the care of such grounds, buildings or estate, and the receipt of the Assessor and Collector for money so paid shall be a sufficient voucher to all executors, administrators, guardians, trustees, or attorneys, against those whom they represent. If any person or persons from whom any tax is required to be collected, or their executors, administrators, guardians, trustees, or attorneys cannot be found, or shall refuse (*b*) to pay the tax aforesaid, and no goods or chattels of

Goods, etc., of tenant set off for rent.

Taxes of minors.

Taxes of non-residents.

such person, sufficient to satisfy such tax, can be found, and the same cannot be collected from any tenant or tenants of such person, or if the owner or owners, or other proper person or persons, having the care and charge over any real estate assessed and described as belonging to "owner unknown," as aforesaid, cannot be found, the Asesssor and Collector shall make and deliver to the Solicitor for said city a certificate of the facts under oath or affirmation, together with a brief description of the real estate on which said tax shall have been assessed, and the name or names of the person (if known) against whom as owners of said real estate said tax has been assessed; and the said Solicitor shall file the said certificate in the office of the Prothonotary of the Superior Court of New Castle County, and judgment shall thereupon be entered therein in favor of "The Mayor and Council of Wilmington" on said described real estate and against the said owner or owners thereof if known, and a writ of *levari facias* shall forthwith be issued thereon, by virtue of which it shall be the duty of the sheriff of said county to advertise and sell the said real estate upon which said taxes have been assessed, under like proceedings as by law are required in the sale of lands and tenements under execution process, and make return thereof to the next regular term of the said Superior Court after the issuing of said writ, and the court may inquire into the circumstances and regularity of the proceedings and either approve the sale or set it aside. If the court approve of said sale, the sheriff shall make a deed (*c*) to the purchasers, which shall convey all interest and property in and to the real estate so sold, [and the said Superior Court shall have power to make all necesasry orders and rules and to issue all process which may be necessary to place the said purchaser in possession of the said real estate.] If the sale be set aside and the said tax be still a lien on said real estate, the court may order another sale, and so on until the tax be collected. Such disposal of the surplus proceeds of said sale shall be made by the court as may be deemed just. No sale shall be approved if the owner be ready at court to pay the taxes and costs, and no deed shall be made until the expiration of two years from the time of sale, within which time the owner or

Certificate of Collector delivered to City Solicitor

Where filed.

Entry of judgment.

Sale of real estate.

Return.

Deed and title.

Act of April 17, 1885. 17 D. L. 905.

owners, his or their heirs, executors, or administrators, shall have power to redeem the said real estate so sold on payment to the purchaser or purchasers, his or their heirs or assigns, of the amount of the purchase money and costs, and twenty per cent. interest. Proceedings for redeeming land so sold as aforesaid shall be by petition to the said Superior Court, and the said court shall have full power to make all proper rules and orders thereon. If no such grounds, buildings or estate be found, the Assessor and Collector shall take the body of such delinquent person and deliver him to the keeper of the common jail of New Castle County, to be detained in safe custody until the said tax, with costs, be paid, or such person be legally discharged. All the powers herein vested in an Assessor and Collector shall devolve upon and be exercised by his executors and administrators, except in cases where a substitute shall be appointed, as provided in Section 88 of this act. On the first Saturday of September, in each year, the Assessors and Collectors shall advertise, in two of the daily newspapers of the City of Wilmington, a full list of the persons whose taxes as aforesaid for the preceding year are, at that date, unpaid, together with a brief description of the real estate taxed, and shall, within two weeks thereafter, make and deliver the certificates required by this section to the Solicitor for said city for all such taxes assessed on real estate as aforesaid which shall not then have been paid.

Redemption proceedings.

Imprisonment for taxes.

Powers of Collector devolve upon executor.

Tax lists.

Certificates.

(a) The tax is a lien on the real estate.

Wolcott, Ch.: "Not so, however, as to its personalty. There is no common law rule which makes the levy and apportionment of taxes, ex proprio vigore, liens on the property of the taxable. Such liens can only be created by statute. There is no statute in this State declaring real estate taxes to be liens on personal property, without the intervention of some kind of execution process. The only mode, therefore, of reducing them to such liens is by distress."

Lord & Polk Chemical Co., 7 Del. Ch. 248 at 258. (yr. 1895)

The Court: " * * if the owner of any real estate * * shall fail to pay the tax thereon in ten days after demand, it shall be the duty of the collector to levy and collect the same with costs by distress and sale of the personal property of the tenant thereof. (187) * * we have no doubt * * that the tax in this case should have been duly levied in some one of the methods prescribed," &c.

Rhoads vs. Given, 5 Houst. 183 at 188. (yr. 1876)

(The above cases show that the statute does not give a lien on personal property, and until distress is made the personal property cannot be taken for real estate taxes, and to make subsequent action valid all prior preliminary steps should be followed. As to the effect of irregular-

ity in not levying on tenants' goods, where there has been a sale of the same, see case of Tilghman vs. Cruson, 4 Har. 341. (yr. 1845). As to suit by tax collector, see case of Laws vs. Jones, 2 Har. 345. (yr. 1838)

(*b*) If one desires to contest the payment of a tax, he should refuse to pay it until the Collector threatens to arrest him or seize and distrain on his property. His payment, then, will be a payment under protest, and his rights will be saved for the future. Anything short of this will be a "voluntary" payment, and will preclude his recovering his money back, even though the law or ordinance proceeded under be unconstitutional.

The following was written on the back of a tax bill: "The amount paid in settlement of this bill of taxes was paid to me by said taxable under protest as being illegally exacted and with the avowed intention of suing for its recovery."

Spruance, J.: "The payment by the plaintiff must have been made upon compulsion, as for example to prevent the immediate seizure of his goods, or the arrest of the person, and not voluntarily. Unless these conditions concur, paying under protest will not, without statutory aid, give a right of recovery."

Monaghan vs. Lewis, 5 Penn. 218 at 225. (yr. 1905)

Wilmington vs. Wicks, 2 Marv. 297 at 301. (yr. 1896)

Equity will not, as a rule, grant a restraining order for taxes illegally assessed.

The Chancellor: "The ordinary remedies in the case of taxes illegally assessed and levied are an action at law after a compulsory payment, either of trespass against the collecting officer, or of assumpsit against such officer or the public corporation to which the amount has been paid. * * Equity will not, therefore, enjoin the collection of a tax alleged to be illegal, where there is an adequate remedy at law. It will not interfere by preventive process, on account of mere irregularities, hardship and injustice in the assessment, or errors or excess in valuation."

P., W. & B. R. R. Co. vs. Neary, 5 Del. Ch. 600 at 610. (yr. 1886) (County tax.)

Neary vs. P., W. & B. R. R. Co., 7 Houst. 419 at 426. (yr. 1887) (County tax.)

E. G. & T. Co. vs. Donahoe, 8 Del. Ch. 422 at 427-8. (yr. 1899) (State tax.)

Confirming the Neary case in above language.

Wales, J.: "The appropriate tribunal for their settlement is the Superior Court, by which they can be heard and determined without interrupting for a single hour the collection of the public taxes, and without impairing the rights or injuring the property of the complainants."

Murphy et al vs. Wil., 6 Houst. 108 at 141. (yr. 1880) (City tax, i. e. assessment.)

Murphy vs. Wil., 5 Del. Ch. 281 at 293. (yr. 1879) (City tax, i. e. assessment.)

(*c*) The language is: "If the Court approve of said sale, the sheriff shall make a deed to the purchaser." The title remains in the taxable till deed made.

Lore, C. J.: "You will note that upon the approval of the sale the act expressly provides: "The president shall make a deed to the purchaser, &c. * * We are at a loss to conceive how the confirmation of the sale by the Court could divest the title of the taxable * * when the act itself in effect says that the title shall be divested by the deed. We are clearly of opinion that the legal title remained in"

(the tax debtor) "until a deed was made in pursuance of the terms of the statute relating to tax sales. * * The general rule is "Until the expiration of the time for redemption, and the execution and delivery of the deed, the title to the lands sold remains with the tax debtor."
Betts vs. Dick, 1 Penn. 268 at 272-273. (yr. 1898)
Knowles vs. Morris, 6 Penn. 76 at 78. (yr. 1906)

SEC. 92. It shall be the duty of the said Assessors and Collectors, on demand and tender of fees, to furnish certificates, under their respective hands and official seals, of all such taxes which are lien on real estate in their respective districts. The fee shall be twenty-five cents for each certificate. The duties required of the Assessors and Collectors under this section shall be one of their obligations covered by the conditions in their official bond. Fee.

SEC. 93. Every Assessor and Collector shall pay to the City Treasurer, or make such deposits in bank to the credit of "The Mayor and Council of Wilmington" of the sums he shall from time to time collect, at such times and in such manner as the Council may by ordinance direct. Payments to City Treasurer.

SEC. 94. Every Assessor and Collector shall appear before the Finance Committee at such time or times and place as they shall appoint, and produce to them the list of taxes as aforesaid, together with his receipts for payments to the Treasurer or certificates of deposit as aforesaid, and thereupon the said committee shall ascertain and determine whether after a just allowance for errors, delinquencies, or otherwise, any and what sum is due and unpaid from such Assessor and Collector to the city. The said committee, or a majority of them, shall make and sign two certificates of their determination in the premises, one of which shall be delivered to the Assessor and Collector and the other to the City Treasurer. (a) If by such certificates any balance appears to be due and unpaid to the city, the Assessor and Collector shall pay the same within fifteen days thereafter, and if such balance be not so paid, the City Treasurer shall certify the fact to the City Solicitor, who shall forthwith take legal pro- Settlement with Finance Committee. Allowance for errors. Certificates. Payment and collection of balance.

cess for the collection of the same from the Assessor and Collector and his sureties.

(a) Even after allowance for errors, &c., and settlement as aforesaid, if the collectors have received money and not accounted for it, it seems both they and their sureties will be liable for it. "It seems that the settlement of a collector's accounts by the Levy Court, and the making of allowances for delinquents as provided by Delaware Laws, chap. 8, Sec. 21, will not prevent the holding of the collector and his sureties liable for money received, and not accounted for by the collector."
Mealey vs. Buckingham, 6 Del. Ch. 356. (yr. 1891)
The Chancellor: "Here the important question is, did * the" collector "in the bond, receive in payment of taxes on the duplicate made out and placed in his hands by the Levy Court any money not accounted for by him? If he did, the proper judicial authorities will see to it that he and his sureties be held to a proper accountability in respect to the same." id. 361.

Act of April 17, 1885. 17 D. L. 902.

Act of April 12, 1887. 18 D. L. 349.

SEC. 95. The salaries and compensation of the said Assessors and Collectors shall be as follows, viz: they shall be paid [eight hundred dollars ($800) each for making the assessment, and for making collections during the months of July and August in each year, and eight per centum on the amounts collected by them on and after the first day of September in each and every year. The said salaries or compensation shall be paid upon warrants authorized by said Council to be drawn on the treasury of the said city.]

SEC. 96. The said board shall have full power to examine the books of plans of the said city in the office of the Chief Engineer of said city.

Assessors and Collectors sworn.

SEC. 97. Each of the said Assessors and Collectors shall, before entering upon the duties of his office, take an oath or affirmation similar to that hereinbefore prescribed to be taken by the members of the said Board of Assessment, Revision and Appeals, and shall give bond to "The Mayor and Council of Wilmington," with freehold security (*a*) to be approved by the Mayor and President of Council, in the amount to be determined by the Council, conditioned for the faithful assessment of his district and collection of the taxes assessed therein, and for the faithful performance of all the other duties of his office that may be prescribed by the said Council, and with a warrant of attorney for the confession of judgment thereto attached. (*b*) Such bonds must be given by

Bond.

Condition.

Warrant of attorney.

the Assessors and Collectors within five days after their election.

(*a*) An ordinance requiring the assessors and collectors to bond with surety companies is void. The Legislature passed a law (known as the Initiative and Referendum Act) allowing the people to vote on certain matters, and if the vote was favorable, making it mandatory upon "The Council" to pass ordinances covering the matter, and prescribing penalties if "The Council" refused to act, thus making "The Council" simply "go through the form." The Council, acting thus, passed an ordinance relating to surety bonds as above, and the Court held it unconstitutional.

State Del. ex rel. The Mayor and Council Wil. vs. Sayers. (yr. 1907). App. Dock. p. 425.

The above provision calls for freehold security. Secs. 78, 87 and 89 of the Charter show an inclination to hold the sureties strictly to the bond. A material alteration in the bond without the knowledge of the surety, releases him. "The official bond of a collector of county taxes when given was signed by the collector, and signed and sealed by his several sureties. Subsequently the principal in said bond affixed a seal to his signature, without the knowledge or consent of the sureties." The Court held the change of a seal released the sureties.

State of Delaware vs. Smith, 9 Houst. 143. (yr. 1890) (Syllabus)

Stoeckle et al vs. Armstrong et al, 8 Del. Ch. 150. (yr. 1897)

(*b*) In the case below cited, an effort was made to bring the bond of a county collector within a statute that related to recognizances, and to make his bond a lien from its caption or acknowledgment.

By the Court: "In regard to the latter" (county tax collectors), "the county has ample security against loss by entering judgment on the warrant of attorney accompanying the bond, and which at once becomes a lien on the real estate, of the sureties, as well as of the officer himself. We are therefore of opinion that the official bond in this case was not a lien from its caption on the lands and tenements * * of * the collector." It is a lien only when entered up.

State use Tharp et al vs. Emerson et al., 3 Houst. 85 at 89. (yr. 1865)

(This is applicable to the assessors' and collectors' bonds.)

Exemption.

SEC. 98. The Council shall not have power to release or exempt any person or persons (*a*) who are liable to taxation from their proper share or proportion of the taxes of the city either by commutation for services, by gratuity, or otherwise.

(*a*) See Sec. 31 of the Charter which says that The Council cannot exempt any individual from the operation of any general ordinance or municipal regulation.

Taxes on horses.

SEC. 99. There may be assessed and collected by The Mayor and Council of Wilmington, for the use of the city, an annual tax upon each horse, mule, ass, or animal of the horse kind, (*a*) owned or kept within the limits of the City of Wilmington, and the Council shall [enjoin upon the Asses-

Act of April 17, 1885. 17 D. L. 902.

sors and Collectors for the City of Wilmington, the mode and manner of assessing and collecting the same.]

(*a*) The Council can fix the amount of tax on animals without notice to the owners.

Nicholson, Ch.: "Thus if the tax on animals be a fixed sum per head, * * there is nothing the owner can do which can affect the amount to be collected from him." So he is not entitled to notice as to the amount.

English vs. Wilmington, 2 Marv. 63 at 92. (yr. 1894)

Telegraph, telephone, and electric-light poles.

SEC. 100. The Mayor and Council of Wilmington shall have power and authority to levy and collect taxes upon all telegraph, telephone and electric-light poles (*a*) and other erections of like character erected within the limits of the City of Wilmington, and the Council may, by ordinance, prescribe the mode of levying and collecting the same. In case any of the owners or lessees of any such poles or erections erected within said city shall refuse or neglect to pay the taxes that may be levied upon such poles, the Council shall have authority to cause the same to be removed and may institute suit to recover the amount of taxes so levied and the expenses incident to the removal of such poles or erections.[1]

Removal.

(*a*) See Sec. 80 paragraph "c," note "a;" and see same Sec. paragraph "g" (3). The Court decided that these taxes belonged to "The Mayor and Council," and not to the Street and Sewer Department.

City bonds exempt from taxation.

SEC. 101. All bonds of the City of Wilmington which have heretofore been issued, or which shall hereafter be issued under any ordinance of said city and by authority of any law of this State, shall be exempt from taxation under any law of this State, and from and after the passage of this act no county tax shall be collected from any persons holding the bonds of said city for or on account of said bonds.

Advisory Board meetings.

[SEC. 101a. The Advisory Board shall meet in the Mayor's office, or at such other place as may be agreed upon by said Board, once each month, or oftener if the Mayor shall deem it expedient, for the purpose of advice and consultation in regard to matters concerning the municipality, but

1. See amendment to Sec. 80 of City Charter. Act of March 25, 1907. 24 D. L. 353.

the action of said Board shall not be binding upon any of said Departments, except in cases of disputes and differences which may arise between or among any of the departments of the municipality, (including the Board of Public Education), or the officials of any department of the city, in which said cases the decision of said Board shall be final. If said disputes or differences be not amicably settled or adjusted within ten days after the same shall have arisen, the matter in controversy shall be referred to said Board for determination. The presidents of all the departments mentioned in the preceding section;[1] including the President of the Board of Public Education shall be ex-officio, members of the Council, and as such shall be entitled to take part in the debates and all deliberations of that body upon the floor of the Council, but this privilege shall not entitle them to the right to vote upon any matter whatever coming before the Council. The Mayor shall be the presiding officer of said Board. The members of said Board as such shall not receive any compensation.]

Action not binding except in case of disputes.

Act of April 5, 1909. 25 D. L. 307.

Shall be adjusted within 10 days.

Ex-officio members.

Not entitled to vote.

Mayor to preside.

Shall receive no compensation.

REGISTRATION OF REAL ESTATE WITHIN THE CITY.

Registration of real estate.

SEC. 102. The Chief Engineer of the City of Wilmington, under an ordinance and appropriation by Council, shall cause to be made books of plans of the said city, divided into sections so far as the streets of the said city are or shall be laid out, which shall show the situation and dimensions of each property therein with the city numbers thereof, who are the owners, with such succession of blank columns as will permit the names of future owners to be entered therein, with the dates of transfer and with index for recording such names alphabetically; and the person or persons who shall be employed to perform such duty shall have access to all books in the Recorder of Deeds' office, and all records of the courts, and in the Register's office, and may take copies or extracts thereof without any charge therefor.

Books. Where kept.

SEC. 103. The original books, when made, shall be kept in the fire-proof of the department of surveys of the said

1. This refers to the preceding section in the Act of April 5, 1909.

Duty of Chief Engineer.

city, and the Chief Engineer shall keep up the said books so as to show at all times who are the owners of the lots on the plans, (and said books shall at all times be accessible to the Assessors of said city,) and said books shall be kept in such manner as not to destroy the evidence of the ownership at any previous time, but by additions which will show the subdivisions of property and the owners thereof as transmissions of title may take place; and the Chief Engineer may furnish copies of the said books, or parts thereof, for such price as may be fixed by Council, for the use of the city, and his certificate shall be received in evidence as and for such proof as the assessment books would be; and lithographed copies of the said books may be multiplied and sold for the profit of the said city.

Certificate.

Report by owner of conveyance.

Sec. 104. To enable the Chief Engineer of the city to keep up the said books of plans, it shall be the duty of every seller and buyer of ground upon the planned plot of the City of Wilmington to make report (*a*) to him of every conveyance made, with the precise dimensions and locality of the premises, and so doing the same shall be recorded without charge and noted on the deed of conveyance by said Chief Engineer or Assistant; but if said seller and buyer shall both omit said duty, the Recorder of Deeds of the County of New Castle shall not admit the deed of conveyance to record in his office without charging twenty-five cents for each lot described therein, and it shall then be his duty to furnish the proper description of such lot or lots, with the date of conveyance and name of grantor or grantee, within one month, into the office of the Department of Surveys, under the penalty of one dollar for each omission, to be recovered as penalties for taking unlawful fees are recovered for the use of the said city; and it shall be the duty of every purchaser of houses and lands at judicial sales, and of every one to whom an allotment in partition shall have been made, and every devisee by will, to make return to the Chief Engineer of the purchase he has made, or allotment he has received, and of all devises made to him by will, with description as aforesaid, which said Chief Engineer shall receive without charge, but if he shall

Recorded.

Duty of Recorder of Deeds to have all deeds for city property duly registered.

Penalty of $1.00 for each omission.

not have done so simultaneously with the completion of his purchase, or on partition effected, or if on probate of any will the devisee shall not have done so, as to any houses or land in the said city purchased, allotted or devised, it shall be the duty of the Clerk or Prothonotary of the proper court under whose authority such judgment or partition shall have been made, and for the Register of Wills, to furnish such descriptions as are above required of the Recorder of Deeds, so far as the wills to be proved in his office shall enable him to do so, for the like charge and under the same penalty; and the Clerk or Prothonotary and Register may make such charges against such purchaser or party taking in partition, or devisee, on delivery of the deed certifying proceedings in partition or granting probate of the will, and that whether the same be in trust or for any estate for life only, or otherwise, unless the party interested shall produce to him or them the certificate of the Chief Engineer that such duty has been performed.

Duty of Clerk or Prothonotary and of Register of Wills to cause certain transfer of real estate to be registered.

(*a*) If no notice of the transfers be given as required, and an assessment be made against property for sewer liens, against the heirs of a deceased prior owner, and not against the owners of land when the assessment was made, it is thought the assessment still would be good.

The Chancellor: The "lands were liable for the payment thereof whoever might be the holder and the owner of the same. * * Equity regards the substance, and not the accidents of things."

Murphy vs. Wilmington, 5 Del. Ch. 281 at 293. (yr. 1879)

But see same case in 6 Houst. 108 at 136 where the Court said the conditions of ordinances should be complied with or the assessment would be void.

See case of Knowles vs. Morris, 6 Penn. 76 at 78 and 79. (yr. 1906)

SEC. 105. If neither the seller nor buyer, devisee nor heir, or other party who has acquired title to houses and lands in the said city shall have furnished the description of the property sold as aforesaid, both he who may have parted with and he who acquired title shall be liable for the taxes thereafter assessed thereon, without right of reclamation or contribution thereof either against the other.

Liable for taxes.

SEC. 106. And should the Chief Engineer apprehend that conveyances, or devises, or descents of houses or lands shall have taken place without being reported to him, he shall cause search to be made therefor and perfect his book

Violation.

Fine.

of plans; and every person found delinquent for six months after acquiring title as aforesaid in making report as aforesaid shall be liable to a fine of five dollars, to be recovered by said engineer in the name of the city as debts of that amount are by law recoverable.

Duties of Chief Engineer.

SEC. 107. The Chief Engineer shall preserve on file, arranged alphabetically and according to date, all reports made to him of descriptions of houses and lands, and for twenty-five cents shall give his certificate at the foot of a duplicate of the description of the designated property or properties when a duplicate of description shall be produced to him with the certificate written out for his signature, and his certificate shall be evidence for the receiver of it, and any clerk, prothonotary, or register, and all others, that this law has been complied with.

REGISTRAR OF BIRTHS, DEATHS AND MARRIAGES.

Act of May 14, 1891. 19 D. L. 253.

Election of Registrar.

SEC. 108. [The Board of Health[1] shall on the first Thursday in May, A. D. 1891, and every year thereafter, elect a Secretary, who shall be *ex-officio*, City Registrar, (*a*) and perform all duties now belonging to said office.]

(*a*) In 1886 "The Council" made an appointment to the above office for 5 years. In 1891 the Legislature amended the law, and the Board of Health (under the amended act) and before the expiration of the term of office of Council's appointee, made an appointment. The appointee of "The Council" was ousted. He afterwards sued the city in assumpsit for back salary. The Court held he should first have established his right to the office by quo warranto proceedings, and that it would not in an action of assumpsit decide the title. The Court also said:

Marvel, J.: "No law is better established than that all that is required, when there is an office, to make an officer de facto, is that the individual claiming the office is in possession of it, performing its duties, and claiming to be such officer under *color of an election* or *appointment*, as the case may be."

Lee vs. Wilmington, 1 Marv. 65 at 71. (yr. 1893)

Duties of Registrar.

SEC. 109. The said Registrar shall keep a separate record of deaths, births and marriages, with a correct alphabet of reference of every name and page. The said Registrar shall also perform such other duties as the Council shall from time to time direct, properly appertaining to his office, and shall be subject to removal by the Council for just cause. The said

1. The Board of Health is now appointed biennially. See Sec. 136 of the Charter.

Council shall furnish the Registrar a suitable office and also find all necessary books, blanks and stationery.

Notice of births.

SEC. 110. It shall be the duty of the parents of the child, midwife, nurse, or one of them, or such person as Council shall determine, within ten days after the birth of any child to file notice thereof with said Registrar; such notice to contain a full, truthful and complete statement of all such facts as may be required by the Registrar, and be filled out and written in and upon such blank or blanks as may be furnished by the Registrar. It shall be the duty of the officiating clergyman or magistrate, or other persons performing any marriage ceremony, within five days thereafter, to file a notice thereof, in writing, with said Registrar, containing a full, truthful and complete statement of all such facts as may be required by the Registrar, and to be filled out and written on such blank or blanks as may be furnished by the Registrar. It shall be the duty of every physician who has attended any person deceased during last illness, or, in case there shall have been no attending physician, then it shall be the duty of the householder in whose family any death occurs, and in case of any inquest being had it shall be the duty of the Coroner holding such inquest to make return to the said Registrar of the facts of such death; such return to be in writing and to contain a full, truthful and complete statement of all such facts as may be required by the Registrar, and to be filled out and written on such blank or blanks as may be furnished by the Registrar. Upon the return of such certificate the said Registrar shall issue a permit, signed by him, authorizing the removal for burial of the body of the person deceased; and no keeper of any hearse, or hackney coaches, or other person, shall receive, carry or convey said body from any premises, and no undertaker or other person shall remove or assist in the carrying or conveying of said body from any premises, and no sexton, undertaker or other person shall bury or assist in the burial of any body except upon the production to him or them of such certificate duly issued by the Registrar. It shall be the duty of any undertaker, or other person, before they shall remove any dead body from the city, to obtain a health permit from

Notice of marriages.

Notice of deaths.

Return by Coroner.

Permit for burial.

the Registrar, and to file a notice containing a full, truthful and complete statement of all such facts as may be required by the Registrar to be filled out and written on such blank or blanks as may be furnished by the Registrar.

Penalty.

SEC. 111. Any person neglecting or refusing to comply with any of the provisions of the immediately preceding three sections, and any person violating any of its provisions, shall be subject to a fine of ten dollars for every such violation, or neglect, or refusal, to be recovered in the Municipal Court of said city in the name of the Registrar and paid into the city treasury.

Registrar's seal.

Evidence.

SEC. 112. The Registrar shall have a seal of office, and his records of deaths, births and marriages, or certified copies thereof under his hand and seal of office, shall be competent evidence in all cases. The Council shall have full power to enact all ordinances in its discretion necessary and proper to effect the purposes of the immediately preceding four sections.

VACATING OF ROADS.[1]

Roads vacated.

Notice.

SEC. 113. No public or private road included within the limits of said city shall hereafter be vacated, either upon the application of the City Council (*a*) or of any person interested, unless notice of the intention to apply, either to the General Assembly, (*b*) or to the Court of General Sessions of the Peace and Jail Delivery, to vacate such public or private road be first published for the period of thirty days in two of the newspapers published in said city prior to such application; and when any such road shall have been vacated as aforesaid,

Damages. How ascertained and paid.

any person sustaining injury thereby may apply to the Court of General Sessions of the Peace and Jail Delivery in and for New Castle County to appoint three disinterested and impartial persons (*c*) to value the damages which he has sustained and

1. Entire jurisdiction and control of the streets of the city, from building line, is now vested in the Board of Directors of the Street and Sewer Department by Act entitled "An Act in relation to the Streets and Sewers of the City of Wilmington," passed April 20, 1887, (Vol. 18, Chap. 188) p. 224 of this volume.

the damages so assessed shall be paid by the City Council aforesaid before said road so vacated shall be closed up or obstructed.

(*a*) The Street and Sewer Department now (not "The Council") makes such application. It has control of the streets.

(*b*) "The General Assembly shall not pass any local or special law relating to" * * the "vacation in whole or in part, of any road, highway, street, lane or alley."
Art. II, Sec. 19, (Constitution 1897)

(*c*) The State law refers to them as "suitable" persons. In the case below cited, an objection among others, was that they were not "freeholders." The Court held that they did not have to be freeholders. This would seem applicable.
In re Lee et al, 4 Penn. 576 at 579. (yr. 1903)

STREETS.[1]

Street centre stones.

SEC. 114. The several posts and mark stones now set and fixed in the earth in the middle of the streets of said city, as well as all such other posts and mark-stones as shall from time to time, be set and fixed in the earth by the City Surveyors or Regulators, shall, in all cases and in all courts of law within this State, be deemed, taken and allowed as landmarks. And if any person shall willfully pluck up or remove any of said posts or mark-stones, such person shall, for every such offense, forfeit and pay a fine of one hundred dollars; and the Council may reward the informer of such offense by allowing him a portion of said penalty not exceeding a moiety thereof.

Removing centre stones.

Penalty.

Reward of informer.

SEC. 115. * * * * * * * * * *

Supplied by Act April 20, 1887. 18 D. L. 352 (Sec. 1.)

Damages to owners of ground taken for streets.

SEC. 116. Before any property or ground shall be taken or occupied for the purpose of extending, widening, laying out or opening any street, square, lane or alley, under the provisions of this act, the owner or owners of such property or ground shall be paid or tendered such damages as they shall respectively be entitled to receive, which damages shall be assessed as follows, viz: Upon the written application of the Mayor, under the direction of the Council (*a*) and reasonable notice (*b*) to the persons interested, if residing in the city, the

Application for commission to assess damages.

1. See also 21 D. L. 427.

Associate Judge of the Superior Court of this State, resident in New Castle County, shall issue a commission under his hand, directed to five impartial (*c*) freeholders of said county, commanding them to assess the damages that may result from the extending, widening, laying out or opening of such street, square, lane or alley, to the owner or owners of property or ground necessary to be taken or occupied therefor, taking into consideration all the circumstances of benefit and convenience, as well as of detriment, to result to such owner or owners, and to make return of their proceedings to the said judge at a time therein appointed. The freeholders named in such commission, being first sworn or affirmed as in said commission shall be directed, shall view (*d*) the premises, and they or a majority of them shall assess the damages aforesaid, and shall make return in writing, of their proceedings in the premises to the said judge, who shall file the same in the office of the Clerk of the Council. The return upon one commission shall not be conclusive; but upon applications by the Mayor as aforesaid, or of any person interested, within fifteen days after the filing of such return, the judge shall issue a commission of review, appointing five other freeholders as aforesaid, with like instructions as were contained in the first commission; *provided*, that if a review be granted upon the application of a person or persons interested, the review shall extend only to the assessment of damages made in respect to the person or persons making such application. If the return to a commission of review vary in the damages assessed from the return to the original commission, the judge shall grant a second commission of review upon the application of the Mayor as aforesaid, or of any person interested in the return to the commission of review, within ten days after the filing of such return. If a review be not applied for in due time, the return to the original commission shall be conclusive as to the amount of damages. If the return to any two commissions correspond as to the amount of damages, such amount shall be conclusive. But if there be more than one return and none conclusive, under the foregoing provisions, the judge shall confirm such one of them as he shall deem most just, and the return so confirmed shall be conclusive. The judge may set aside a return to a commis-

Consideration of benefits and injuries.

Return of freeholders.

Commission of review.

Proviso.

Second review.

Approval by judge.

When return set aside.

sion for gross inequality or inequity, in which case he shall issue another commission in its place. The judge shall have power to fill any vacancy in a commission. There shall be allowed to the commissioners for their services three dollars per day, to be paid by Council. The amount of damages being so ascertained, the Council may pay or tender the same to the person or persons entitled thereto, within two calendar months after the same shall have been finally ascertained, or if the person or persons so entitled reside out of, or are absent from, the city during said period of two months, then the same may be deposited to his or her credit in the Farmers' Bank of Delaware at Wilmington within said time, and thereupon the said property or ground may be taken or occupied for the use aforesaid. Whenever damages shall have been assessed to any owner or owners of property for the opening, extending or widening of any street, square, lane or alley, and the Council shall fail, omit or neglect to pay or tender the amount of said damages to the person or persons entitled to the same, or to deposit the same in the manner and within the time herein provided for such payment or tender or deposit, no further application or proceedings shall be made or had for the opening, extending, or widening of said street, square, lane or alley, through or upon the same land or premises for which said damages were assessed, until after the expiration of one year from and after the said assessment. In any proceedings hereafter taken for extending any street, no person or persons shall be entitled to any damages for any house, building or structure hereafter placed or erected within the City of Wilmington upon any ground lying between lines drawn from the building lines of such street to the limits of the city in the direction which the said street would take if extended as laid down on the map or plan (^{e}) of the City of Wilmington.

Vacancies.

Commissioners compensation.

Payment or tender of damages.

Damages barred in certain cases.

(a) Now, the Street and Sewer Department (see Secs. 4 and 7 of that Act, pp. 228-233 of this volume.) Whenever the word "Council" appears, insert "Street and Sewer Department."

(b) Reasonable notice should always be given.

Nicholson, Ch.: "Whenever the first method of assessment above referred to is adopted by the Legislature, viz: an assessment made by * * commissioners * * who are to view the estates and levy the expense in proportion to the benefits, which, in their opinion, the estates, respectively, will receive * * it is now un-

questioned and unquestionable that an opportunity for a hearing is absolutely necessary to the validity of the assessment.''

English vs. Wilmington, 2 Marv. 63 at 90. (yr. 1894)

(The above was the case of the laying of a sewer pipe.)

Dodd et al vs. Hart, 8 Del. Ch. 448 at 454. (yr. 1900)

Saulsbury, Ch.: ''The law sedulously protects a man's freehold. He cannot be deprived of it except in accordance with law.''

Fulton vs. Dover, 6 Del. Ch. 1 at 16. (yr. 1886)

The above case was one of condemnation of lands for streets. Notice was required to be given ''immediately'' after, &c.

The Chancellor: ''Now the 26th of March, 1886, was not *immediately* after the 7th of December, 1885,'' &c. Notice three months after the time was not compliance with the law.

Id 8 Houst. 78 at 88. (yr. 1888)

''Giving such notice on the *day after* * * satisfies the requirement of the statute that the notice shall be given *immediately* after survey and location.'' id 79 (syllabus)

(*c*) In the case below cited (but not reported), it was held by Chancellor Nicholson that the commissioners named in the above section could be tax-payers of the city and still be ''impartial.''

Wiley, trustee of Morris vs. Wil. (yr. 1910) Ch. Rec. V 2, p. 110-112.

Anderson vs. Wil., 6 Penn. 485 at 486. (yr. 1907) overruling,

Robinson vs. Mayor and Counc. Wil., 8 Houst. 409. (yr. 1889)

See case in 5 Har. 242 (no name given). (yr. 1849)

It was held that the Town Council of Dover were competent commissioners to condemn lands and assess damages for lands taken in the Town of Dover, especially as the statute allowed an *appeal* to five commissioners.

Fulton vs. Dover, 8 Houst. 78 at 100. (yr. 1888)

(*d*) All the freeholders should ''view'' the premises.

Grubb, J.: ''The record discloses, and accordingly it is objected, that a majority only, and not all of the Town Council were present when the determination to extend Queen street, and the assessment of the complainant's compensation, were made; * * but these acts * * of this majority under the proper construction of Sec. 16 * * were as good and binding as if the whole Council had participated therein.'' This may have been on account of the statute.

Fulton vs. Dover, 8 Houst. 78 at 101. (yr. 1888)

In the following case the Court held that *all* should have viewed the premises.

The Chancellor: ''It appears that the commissioners named in the Act of Assembly did not before proceeding to perform their duties, *all* go upon and view the several swamps and low grounds * * as by the act they were required to do. (565.) The original invalidity of the action of the commissioners in the omission to go upon the lands of each taxable before assessing their several contributions, is fatal to the whole course of procedure, and sufficient in itself * * for a perpetual injunction.''

Curry vs. Jones et al, 4 Del. Ch. 559 at 566. (yr. 1872)

It is safest, always, for *all* the commissioners to do all the acts required. The law is well laid down as follows:

Wales, J.: '' * * if a city ordinance imposes certain conditions which must be complied with in order to make a legal tax, the failure to comply with any of the conditions renders the tax void.''

Murphy et al vs. Wilmington, 6 Houst. 108 at 136. (yr. 1880)

(*e*) Persons must take notice at their peril of the city plan.

The Court: "The owners of lots hold them subject to this plan * * and are bound to build in conformity with that plan."

Clark vs. Wil., 5 Har. 243. (yr. 1849)

(In the above case a cellar was flooded by grading a street.)

Cullen, J.: "If property be damaged "by reason of its location when the streets and sidewalks should be brought to the grade *then existing* when he purchased this house of which he was bound to take notice," the owner thereof has no action therefor against the city."

Benson vs. City, 9 Houst. 359 at 364. (yr. 1893)

(The above was a case of a flooded cellar.)

(The city can change grades without liability—this is general law.)

Expenses of widening and opening streets, etc., apportioned among those benefited.

SEC. 117. In any proceeding taken for extending, widening, laying out, or opening any street, square, lane or alley under the provisions of this act, the commission to be issued by the Associate Judge of the Superior Court of this State resident in New Castle County, in furtherance of that purpose, in addition to the requirements of Section 116 preceding, shall contain a further command that (after assessing the damages that may result from the extending, widening, or laying out or opening of such street, square, lane or alley to the owner or owners of property or ground necessary to be taken or occupied therefor, taking into consideration all the circumstances of benefit and convenience as well as of detriment to result to such owner or owners) they estimate the probable entire cost of such contemplated improvement, including damages to owners of property necessary to be taken or occupied therefor, and after giving timely notice of their time and place of meeting and opportunity to persons interested residing in the city, to be heard, that they make an allotment, apportionment, assessment and division of such portion as they shall deem just and reasonable of such estimated cost upon and among the persons, properties, interests and estates which will, in their judgment, or that of a majority of them, be specially benefited (*a*) by such improvement, according and in proportion to the quantity and extent of such benefit, according to their best judgment. (*b*) In forming such judgment all those shall be deemed specially benefited by such proposed improvement who, in the judgment of the freeholders, commissioners, may be benefited thereby beyond the value of any detriment which can occur to them thereby, or who may be benefited thereby without

Ascertainment of benefits.

any detriment therefrom, and in either case beyond the benefit which inures to the citizens of said city or property owners therein, generally, by reason of such improvements. The commissioners having made such allotment, appointment, assessment and division of such portion of such estimated cost, shall make return thereof to the said judge, who shall file the same with the assessment of damages, in the office of the Clerk of the Council, who shall submit the same to the Council for its approval or disapproval; and upon approval by the Council of any assessment for benefit, the Clerk of said Council shall immediately enter such approved assessment in the record or lien book kept for that purpose. And the same being so recorded shall at once constitute and be evidence of a debt for that amount and in that behalf from the person assessed to The Mayor and Council of Wilmington, and shall further, from the time of its entry as aforesaid, be and remain a lien upon the lands and buildings, interest and estate in respect of which such assessment for benefit was made, and as such lien shall have priority over any lien, encumbrance or conveyance made or suffered by the owner or owners of such property after the recording of such assessment as aforesaid; and for the collection thereof, the said Mayor and Council of Wilmington may proceed as in other cases for the collection of debts, or in the manner provided for the collection of claims or liens for paving, and the provisions of the law in that behalf, both in regard to the process, notice, advertisement, sale, conveyance, title, costs and disposal of proceeds of sale, shall apply to the proceedings herein provided for, except that any residue to which the owner of any property sold shall be entitled may, instead of being paid into the Farmers' Bank of Delaware at Wilmington, be placed in the city treasury, and be held by the city for account of the person who shall be justly entitled thereto and paid to such person on demand; and in case the amount so as aforesaid assessed, collected and retained by the city for the purpose of effecting such improvement as aforesaid shall not be required and expended therefor within twelve calendar months after the payment thereof into the city treasury, the whole amount may be demanded and sued for or otherwise

Return and filing of the assessment.

Entry in lien book.

Assessment a lien on lands, etc.

Priority of lien.

Collection of liens.

Residue of proceeds of sale placed in city treasury.

Recovery of residue from the city.

recovered from the city by the persons respectively entitled thereto. The return to one commission for assessment for benefit shall not be conclusive, but in regard to reviews, appointment of other commissioners, returns and confirmations, the city and other persons interested shall have the same rights, and the judge the same power and authority, and the effect of confirmation, and the costs shall be the same as in the case of proceedings for assessment of damages to the owner or owners of property or ground necessary to be taken or occupied therefor for extending, widening, laying out, or opening streets, squares, lanes or alleys under Section 116 of this act. For all the purposes of the foregoing proceedings, when a bill is required to be presented, notice given, or demand made, it may be presented, tendered, given or made to the actual owner of the property in regard to which such proceeding is taken, or any one of them, where it is owned by more than one, or to any person occupying, having use or charge of the property, or in case it be unoccupied and the owner unknown or not residing in the said city, such bill may be presented, notice given, or demand made, by setting up or leaving on the premises, or by one advertisement, in a newspaper published in said city, a notice setting forth the substance of such claim, bill, demand or notification; and such proceeding shall have the same effect as if a personal service thereof had been duly made and returned. In case of a corporation-owner or occupant of land benefited or to be benefited by such contemplated improvement, such presentation, notice, or demand, may be made to or upon the president, vice-president, secretary, treasurer or any director thereof, either personally or by letter mailed to the proper address.

Confirmation Rights and powers of judge and parties respecting review.

Notice of lien or claim. How given to owners.

(*a*) This is a most important section. It contemplates that persons and property benefited shall be charged up with those benefits. In practice it is never lived up to, but *all* the benefits are charged up against the property that is condemned. When a street is widened, properties on both sides the street are equally benefited. The practice is to give the owner of the property, who is not molested in any way, the benefits free, and to charge up against the person, who is made to tear down his property, perchance his home, *all* the benefits accruing from the widening of the street. Simple justice should put an end to this inexcusable and inequitable practice. It may be a little difficult to know just where to stop, and how to grade or apportion the benefits, but it can be done. It

is legal, the statute requires it, and the statute, therefore, should be obeyed. The following applies:

Wales, J.: "That the expense of local improvements in a town or city may be met by local assessments in whole or in part, appears to be so well established as to require no discussion."

Murphy et al vs. Wilmington, 6 Houst. 108 at 133. (yr. 1880)

(This was an assessment for the construction of a sewer.)

Nicholson, Ch.: " * the many cases which have been decided fully establish the general proposition, that a statute authorizing the municipal authorities, to open or establish streets, or to make local improvements of the character above mentioned and to assess the expense upon the property which, in the opinion of the designated tribunal or officers, shall be specially benefited by such street or improvement, in proportion to the amount of such benefit, * * is, in the absence of some special constitutional provision, a valid exercise of the power of taxation."

English vs. Wilmington, 2 Marv. 63 at 84. (yr. 1894)

(*b*) All that is required of the commissioners in this difficult task is, they use "their best judgment." In the case below cited the "adjacent lands" of the owner were assessed for benefits.

Grubb, J.: "It is further objected that the smallness of the compensation would seem to indicate that the town council estimated and deducted special benefits to the complainant's *adjacent* lands. This, however, would not be a valid objection to their proceedings, for such a course would be warranted by the terms of Section 7 of said act, and by judicial authority."

Fulton vs. Dover, 8 Houst. 78 at 101. (yr. 1888)

The following case shows the method of ascertaining benefits:

Bates, Justice: "Suppose the land taken to be, in itself, worth $1,000, but that the improvement to which it is applied enhances the value of the individual owner's other property $500. It is manifest that a sum exceeding $500 in addition to this enhanced value would be more than a just compensation for the damage sustained. It might also happen that the amount of damage received would greatly exceed the intrinsic value of the property taken, in which case such intrinsic value would be less than a just compensation. The rule which would assume the intrinsic value as the measure of compensation would operate very unequally, and sometimes, very unjustly. It is not easy to perceive any other mode of arriving at a just compensation than by considering *all* the consequences of the act complained of, whether they enhance or mitigate the injury."

Whiteman's Ex. vs. The W. & S. R. R. Co., 2 Har. 514 at 524. (yr. 1839)

Act of Feb. 7, 1887. 18 D. L. 338.

[Whenever the Council (*a*) shall deem it necessary to take any turnpike road within the limits of the City of Wilmington, (as the same now or hereafter may be extended) for the purpose of converting the same into a public street or highway, the same may be done under the provisions of law at present existing for extending, widening, laying out or opening any street, square, lane or alley, and the methods of pro-

cedure in such cases shall be made as near as may be conformable thereto.]

(*a*) The Street and Sewer Department, now.

Council authorized to pave between curbs. See note to Sec. 114, ante.

SEC. 118. The Council (*a*) are hereby authorized in their discretion, to cause any street to be paved between the curb lines, agreeably to the true regulation of said street, under the direction of the Street Committee, and the cost and expense of such paving and keeping the same in good order and repair shall be paid by the city and provided for by general taxation. The provisions of this section shall not diminish, or in any way alter, the liability of any person to the said "The Mayor and Council of Wilmington," or the lien upon any land or buildings for the expense of paving the beds of streets done prior to its passage.

Costs. How paid.

(*a*) The Street and Sewer Department, now.

PAVING AND CURBING.

Paving of streets and alleys. Act of May 5, 1891, 19 D. L. 425.

[SEC. 119. Upon the application of fifteen freeholders residing or holding property in any lane or alley in said city, or if there be less than fifteen freeholders residing or holding property as aforesaid, then upon the application of a majority of such freeholders, the Board of Directors of the Street and Sewer Department are hereby authorized, in their discretion, to issue their precept, signed by the president of said board and directed to the street commissioner, commanding him to cause the footways and gutters of such street or alley to be paved with brick, stone or other material as the case may require, and to fix curbstones therein, agreeably to the proper ground plan and regulations of said city. The paving and curbing of the footways shall, upon the completion of such paving and curbing, be forthwith measured by the Chief Engineer of the Surveying Department who shall transmit such measurement to the said board of directors, and it shall be the duty of the said board of directors to have the cost and expense of all such paving and curbing assessed upon all the owners of property bordering or fronting on the street where it is so paved and curbed, according to the number of feet contained in the street line of the property of such owners respec-

Measuring of pavement.

Assessment of costs.

Approval of assessment.

tively. (a) If such assessment shall be approved by the said board of directors, they shall cause said approved assessment to be immediately entered in a record book to be kept by them for that purpose, and the same being so recorded shall, from the time of its entry as aforesaid, be and remain a lien upon the lands and buildings of each of said owners fronting on such street as aforesaid to the extent of the amount of his approved assessment and as such lien shall have priority against any lien, encumbrance or conveyance made or suffered by the owner or owners of such property after the recording of such assessment as aforesaid. It shall be the duty of the board of directors to cause a transcript of all such recorded assessments to be forthwith transmitted to the City Auditor, who shall enter them of record in his office.

Lien.

Transcript of assessment.

(a) See note to Sec. 117 "a" and "b."

Bill for paving.

The said board of directors shall forthwith present to each of said owners or other persons having charge of said property a bill for the proportion of such expense so assessed to such owner. [And if any account liened or assessed in the manner aforesaid is paid within sixty days after the date of the presentation of the bill of such assessment to the owner or agent of the property a discount of (5%) five per cent. will be allowed on the face of the bill so presented; and upon all assessments paid after sixty days and on or before ninety days after presentation of the bill the face of the bill shall be payable; and upon all assessments not paid within ninety days after the date of the presentation of the bill as aforesaid, interest at the rate of six per cent. (6%) per annum shall be charged from ninety days after the date of such assessments as aforesaid until the same is paid in full.] And if the amount of said bill be not paid [at the end of one year] after such presentation thereof it shall be the duty of the Mayor of said city to issue his warrant, directed to the said board of directors, commanding them to levy the same with all costs thereon upon the grounds or buildings of such owner fronting on such street as aforesaid, which said ground or buildings or any part thereof shall be sold by said board of directors at public auction, upon ten days' notice in two newspapers published in

Act of March 26, 1895. 20 D. L. 154.

Failure to pay bill.

Act of March 26, 1895. 20 D. L. 154.

Sale of property.

Notice.

said city, and a deed from The Mayor and Council of Wilmington shall convey to the purchaser of said grounds or buildings as full and complete a title to said premises, in fee simple or otherwise, as if the same were executed by said owner thereof. And it shall be the duty of said board of directors, out of the purchase money of the said premises so sold as aforesaid, to pay all costs arising from said process and sale to the parties entitled thereto respectively, and to pay to the City Treasurer, for the use of the Street and Sewer Department, the amount of said approved assessment so assessed to such owner as aforesaid, for which they shall take and the City Treasurer shall give duplicate receipts, one of which shall be retained by the said board of directors and the other shall be by him forthwith transmitted to the City Auditor. The residue of said purchase money shall be immediately deposited by the said board of directors in the Farmers' Bank of Delaware, at Wilmington, to the credit of the owner of the property so sold, for which said board of directors shall take from the cashier of said bank duplicate certificates of deposit, and one of said certificates shall be filed in the office of said board of directors and the other of said certificates shall be filed in the office of the City Auditor; and the said board of directors, or a majority of them, shall make duplicate returns under their hands of their proceedings under such warrant as aforesaid immediately after any sale is made, one of said returns to be filed in the office of said board and the other of said returns to be filed in the office of the City Auditor. Said returns shall be entered upon the records of the assessment so kept as aforesaid.

Application of proceeds of sale.

Return of proceedings.

Nothing in this section shall operate or be construed to invalidate any lien for curbing and paving now existing and uncollected. But all such liens shall be collected by sale or otherwise as prescribed in this section. Whenever the Board of

Lien.

Note.—Section 2, Act of March 26, 1895, 20 D. L. p. 154 is as follows:
"Section 2. The board of directors of the Street and Sewer Department are hereby authorized to apply the provisions of this act to any and all assessments heretofore made for curbing and paving now existing and uncollected; provided, that nothing in this Section shall operate or be construed to invalidate any asssessment or the lien thereof."

Curbing and paving of footways in parks.

Park Commissioners shall deem it necessary to curb and pave footways, within the limits of the parks of this city, in front of any private property bordering or fronting upon any footway so to be curbed and paved, they shall cause such footways to be curbed and paved, and the Chief Engineer of the Surveying Department shall measure such curbing and paving, and shall certify such measurement, so made as aforesaid, to the Board of Directors of the Street and Sewer Department,

Assessment of costs.

who shall assess the same, with the costs thereof, against the property upon which it immediately borders or fronts, and the measurement and assessment thus made shall be returned

Liens.

upon the same lien books and in the same manner as is hereinbefore provided for entering liens for street paving and curbing. The method of collection of such liens shall be the same as is hereinbefore provided with respect to other liens for curbing and paving, and such liens shall have a similar

Proviso.

priority over other liens and encumbrances. (*a*) *Provided, nevertheless*, that the moneys collected for paving and curbing in the parks shall be by the Street and Sewer Department paid over to the Board of Park Commissioners for park purposes. The Street and Sewer Department may, however, at its option, (*b*) repair any footway of the city without notice being

Repairs of footway.

first given to the owner or owners of abutting property, and the expense of repairing the same shall be assessed in the same manner as provided for curbing and paving in this act against the premises fronting on said footways, and shall constitute a lien against such premises, and shall be collected as other liens for curbing and paving provided for by this act.]

(*a*) This Sec. 119 is set out, in substance, in the case of the Mayor and Council of Wilmington vs. Ewing, 2 Penn. 66 at 96-7.

(*b*) This clause, giving the Street and Sewer Department, at its option, the power to repair, &c., without consulting the property owner, thereby placing a *duty* upon it, is the theory of its implied liability.

Spruance, J.: "In general, but not uniformly, it has been held that where the duty of *control* over the streets is imposed upon a municipal corporation, there is an implied liability arising from default in the performance of such *duty.*"

Mayor and Counc. Wil. vs. Ewing, 2 Penn. 66 at 100. (yr. 1899)

This liability arises from duty, because of control of the streets, and not from any implied contract.

"Such liability * * never arises from any implied contract between the city and the persons injured, but, in the absence of statutory exemption, it is implied by law from the *duty* imposed by law upon the city." id 105.

SEC. 120.(a) The owner of any ground may pave his, her, or their own front or fronts, provided it be completed within twenty days from the day of fitting the curb stone, and notice thereof given to such owner, if such owner reside in said city, by writing, under the hand of said commissioner, served personally or by being left at his or her dwelling house; but the curbstones shall, in all cases, be furnished and fixed by the said commissioner. Owners may pave their own fronts.

(a) This section is set out in the above mentioned Ewing case, p. 97. This provision gives the property owner a conditional right to "pave." The second paragraph of Section 119 gives the Street and Sewer Department the option to "repair" as explained. The second paragraph of Section 121 gives the Department the option to "pave or repair," and the first paragraph of Section 121 gives the Department the power to "compel the paving and repairing," &c. The language in regard to the placing of the *duty* is not so clear as one would wish it to be. The Court thought as follows:

Spruance, J.: "The Legislature had the right to impose on the abutting owner the duty of repairing the footways in front of his property, and considering all of the above recited provisions of the Charter together, it is by no means certain that they have not done so. * * We do not, however, consider it necessary in this case to determine whether the Legislature has imposed upon property owners the duty of repairing the adjacent footways." Mayor and Council vs. Ewing, 2 Penn. 66 at 105. (yr. 1899) A statute, (Sec. 121 of the Charter) exempting the city from liability, conditionally, was the reason for not deciding where this duty belonged. (See Sec. 121, paragraph 3, "b.")

SEC. 121. (a) The [Street and Sewer Department] shall have full power and authority to compel the paving [and repairing] of footways between the curb-stone and the building line in front of lots whereon is erected any dwelling-house, office, place of business, railing, fence, stone or brick wall, or permanent structure of any kind, also in front of such vacant lots as in their discretion should be paved to the full breadth as aforesaid, and to regulate and prescribe the mode of paving [or repairing] footways and the material to be used therein. The space between the curb and building lines on footways where, in the discretion of the [Street and Sewer Department], the owner may not be obliged to pave to a greater breadth than five feet from the curb-stone, shall be covered with gravel to the depth of at least six inches and leveled in conformity with the part that is paved. *Provided, however*, that any person owning land on any street who may desire to fix curb-stones in front of their property Act of April 24, 1889. 18 D. L. 889.

Footways between curbstone and building line.

Proviso.

Privileges of owners.

may have the privilege of purchasing and fixing the same under the supervision of the Street Commissioner upon application to the [Street and Sewer Department,] and the

Act of April 24, 1889—889.

[Street and Sewer Department] may grant or refuse any such application, in its discretion.

(*a*) This section is set out in the above case, on p. 97.

Sewer department may pave or repair footways.

[The Street and Sewer Department may, however, at its option, pave or repair (*a*) any footway of the city, and the expense of paving or repairing the same shall be assessed against the premises fronting on said footway, and shall constitute a lien against such premises.

(*a*) See Sec. 119, second paragraph, "c."

Method of assessing damages.

The method of assessment and such proceedings as may be had thereon, shall be the same, as far as may be, as now

Act of April 24, 1889. 18 D. L. 889.

provided by law in regard to paving and curbing footways in Section 119 of this act. The owner (*a*) of any premises fronting upon any footways, shall be solely responsible for any

Responsibility for damages.

damage that may result to persons or property by reason of any hole, excavation or obstruction in or upon such footways, or from any defective condition of such footways; *provided however,*

Proviso.

that such hole, excavation or obstruction or other defective condition of the footways aforesaid is not caused by the city or any of its authorized agents.] (*b*)

(*a*) A person stepped into a broken gutter plate on a sidewalk and was injured. The city was sued and damages recovered. The case was taken to the Supreme Court, and reversed in favor of the city on the ground that the above section, exempting the city from liability, was valid.

Spruance, J.: "The sole question necessary now to be considered, is, whether that part of the said amendment which purports to relieve the city from liability for damages resulting from the defective condition of footways, except such as are caused by the city or any of its authorized agents, is constitutional and valid. (100) From considerations of public policy, as to the sufficiency of which we have no right to determine, the Legislature has by an amendment of the Charter of the City of Wilmington, limited the liability of the city to cases of defective condition of footways "caused by the city or any of its authorized agents," and we hold that the said limitation was within the power of the Legislature," and "that the said amendment, so far as this case is concerned, is constitutional and valid." Mayor and Council vs. Ewing, 2 Penn. 66 at 106. (yr. 1899)

This case overrules the case of Seward vs. Wil. 2 Marv. 189. (yr. 1896)

This exemption extends only to the "footways," not the streets.

The Court did not decide whether or not the property owner was liable.

Spruance, J.: "We do not * * consider it necessary in this case to determine * * whether that part of said amendment which purports to make such owners responsible for damages resulting from the defective condition of such footways is constitutional." id. 105.

The question of the property owner's liability came up in the case below mentioned. The declaration contained an allegation that it was the "duty" of the property owner to repair and keep his sidewalk in a reasonably safe condition. Upon demurrer and joinder, the Court decided that there was no duty, (and, therefore, no liability) on the part of the property owner to "repair" his sidewalk until he had first been notified by the Street and Sewer Department to do so, under Sec. 121 of the Charter. As the declaration had no allegation to the above effect, the Court sustained the demurrer.

Fleith vs. Cunningham. (yr. 1908) unreported. Cont. Dock. I (2) p. 516.

The Ewing case decided the city was not liable unless it could be shown that the defective condition of the sidewalk was caused by the city or some of its authorized agents, and the Fleith case has decided the property owner is not liable, at least, until, and unless the owner has first been notified by the above Department to repair his sidewalk, and he neglects, for a reasonable time thereafter, to do so.

(See Sec. 120 "a" where the nature and extent of the "duty" are shown.)

(*b*) To make the city liable the work must have been done by "the city or any of its authorized agents." "Authorized agents" mean, not only those in the city's employ, but those *authorized* by the city (as licensed plumbers) to make excavations in the streets.

Comegys, C. J.: "It" (the city) * * "authorizes by license, parties not in its employ to do certain things, as for example, in the case before us, to open the public streets," * * and "it may employ agents for such purpose * * it is the duty of the city to see to the work the same as if it were being done by its own agents." 527. And if it does not, and injury results through the negligence of the licensee "then the defendant" (city) "is liable for the plaintiff's damages, and the defendant" (city) "and not the plaintiff, must look to the plumber for responsibility."

Anderson & Son vs. Mayor and Council Wil., 8 Houst. 516 at 528. (yr. 1889)

As already stated the above applies only to the "footways."

The city is liable, as heretofore, as to the "street."

The law as to general liability for defective streets, is as follows:

Comegys, C. J.: "It was the duty of the city to keep the street in a safe and passable condition. * * It was not the duty of the plaintiff to be searching for obstructions or holes in the street as he was walking along it, but" (he) "had a right to assume that the street was in a reasonably safe and passable condition."

Robinson vs. Mayor and Counc. Wil. 8 Houst. 409 at 414. (yr. 1889)

The city's liability and non-liability, in general, may be stated, briefly, as follows: It is not an insurer. If it does the negligent act itself, it is liable. If another does it, the city is bound to know of it after a reasonable length of time (whether it ever does or not, is immaterial), and if it does not then repair, &c., it is liable. It is not liable for an act of God,—washouts, breakdowns, &c., from sudden and severe storms until after notice of the same, actual or constructive, and neglect, thereafter, to repair, &c. It is liable for work done in an improper and unworkmanlike manner in the same way as an individual would be, but for

acts that are purely judicial or discretionary, such as deciding upon the height and grade of streets, the location, size, inlets and outlets of sewers, the kind of materials to be used in the construction, &c., of the work, the city is not liable.

The following cases may be useful for ready reference:

Robinson vs. Wil., 8 Houst. 409. (yr. 1889) hole in sidewalk.

Wilkins vs. Wil., 2 Marv. 132. (yr. 1895) hole in street.

Seward vs. Wil., 2 Marv. 189. (yr. 1896) hole in street. Act of God.

Pierce vs. Wil., 2 Marv. 306. (yr. 1897) hole or washout.

Carswell's Admr. vs. Wil., 2 Marv. 360. (yr. 1897) hole or trench in street.

Wil. vs. Ewing, 2 Penn. 66. (yr. 1899) hole—open gutter plate.

Anderson vs. Wil., 6 Penn. 485. (yr. 1907) hole or washout.

Kent vs. Wil., 7 Houst. 397. (yr. 1886) trench not properly filled up.

Schelich vs. Wil., 1 Boyce 57. (yr. 1909) trench not properly filled up; act of God.

Clark vs. Wil., 5 Har. 243. (yr. 1849) flooding cellar by raising grade.

Anderson & Son vs. Wil., 8 Houst. 516. (yr. 1889) flooding cellar from trench.

Magarity vs. Wil., 5 Houst. 530. (yr. 1879) flooding cellar by changing grade.

Benson vs. Wil., 9 Houst. 359. (yr. 1893) flooding cellar, &c.

Harrigan vs. Wil., 8 Houst. 140. (yr. 1888) overflow from sewer.

Hession vs. Wil., 1 Marv. 122. (yr. 1893) sewer too small; cellar flooded. Act of God.

Wil. vs. Vandegrift, 1 Marv. 5. (yr. 1893) obstruction—sledding.

Anderson vs. Wil., 2 Penn. 28. (yr. 1899) obstruction—wire across street for sick.

Colbourn vs. Wil., 4 Penn. 443. (yr. 1903) obstruction—fallen wire.

Jarrel vs. Wilmington., 4 Penn. 454. (yr. 1903) obstruction—weak awning.

Murphy vs. Wil., 6 Houst. 108. (yr. 1880) diverting water course—Shipley Run.

See also,

Fleith vs. Cunningham (unreported). (yr. 1908) obstruction, raised gutter plate.

Louth vs. Thompson, 1 Penn. 157. (yr. 1897) open cellar door.

Cook vs. Wil. C. Ry., 9 Houst. 306 at 311. (yr. 1892) fallen wire.

Neal's Admr. vs. W. & N. C. E. Ry., 3 Penn. 467 at 471. (yr. 1902) fallen wire.

Downs vs. Coms. Smyrna, 2 Penn. 132. (yr. 1899) mowing machine in street.

Green vs. Newark, 5 Penn. 316. (yr. 1905) stone in street.

Stidham vs. Del. City, 6 Penn. 359. (yr. 1907) hole in street.

Flanagan's Admr. vs. Wil., 4 Houst. 548. (yr. 1873) The declaration was, the city dug the hole; the proof was the city did not do it; a non-suit was granted.

Higgins vs. Wil., 3 Penn. 356. (yr. 1902) The declaration was, one "jumped off;" the proof was, he was "hurled or thrown off;" a non-suit was granted.

McCoy vs. P., W. & B. R. R. Co., 5 Houst. 599. (yr. 1879)

McAllister vs. Peoples Ry. Co., 4 Penn. 272 at 277. (yr. 1903)

Act of April 24, 1889. 18 D. L. 890.

SEC. 122.(a) Upon the completion of any paving or curbing as aforesaid, the [Chief Engineer of the Surveying Department] shall give to the owner of the property so curbed and

paved, a certificate that it has been done according to the proper ground plan (*b*) and regulation of the city, and shall deliver a duplicate of such certificate to the clerk of the [Street and Sewer Department], who shall record the same in a book to be kept for that purpose, and carefully file and preserve the certificate; and no owner of property to whom such certificate is thus given shall be liable for any change or error of regulation, or subsequent curbing or paving of the same property by the [Street and Sewer Department in consequence of such change or error, but the same shall be defrayed by the Street and Sewer Department.]

Duplicate certificate.

Liability for errors.

Act of April 24, 1889, 18 D. L. 890.

(*a*) This section is set out, in substance, in the Ewing case (above) p. 98.

(*b*) See Sec. 116, "e" as to the importance of observing the "plan" of the city.

[It shall not be lawful for the owner, tenant or occupant of any premises fronting on any street having sewer accommodations to excavate or dig any privy-vault or cesspool in or upon such premises, or to permit or suffer the same to be dug or excavated without first having obtained the consent of the Street and Sewer Department therefor, which consent shall be expressed upon the minutes of the department and shall stipulate that any such privy-vault or cesspool shall be properly connected with and drained by means of such sewer accommodations. Any owner, tenant or occupant of any such premises who shall excavate or dig or cause or suffer to be excavated or dug any privy-vault or cesspool contrary to the provisions of this section shall forfeit and pay for each and every offense the sum of twenty-five dollars ($25) and the further sum of ten dollars ($10) for each and every day such privy-vault or cesspool is permitted to exist. The penalties provided for in this section shall be recoverable before the Municipal Court for the City of Wilmington and be paid to the use of the city.]

Privy-vault or cesspool.

Act of April 24, 1889, 18 D. L. 890.

Penalty.

Sec. 123. The City Surveyors and Regulators are authorized and required to lay out proper gutters, channels and conduits for carrying off the waters in said city.

City Regulator required to lay out gutters.

Sec. 124. So much of an ordinance of the freemen, resident inhabitants of the borough of Wilmington, in general town meeting legally called and met, entitled "An ordinance to establish the regulation of the ascents and descents of the

Act to vacate Water street.

See 3 D. L. c. 70, p. 160.

streets, lanes and alleys within the borough of Wilmington, and for other purposes,'' as the same is particularly set forth in the third section of an Act of the General Assembly entitled ''An Act to vacate and discontinue the street called Water street in the borough of Wilmington, from Market street westwardly to the line of said borough, and for other purposes,'' passed at Dover, January 24th, 1801, as provides for the width of footways and pavements, the depth of gutters, the height of curbs, and the extent of steps, (*a*) porches, cellar-doors, or other inlets to buildings in the streets, lanes or alleys of the said city, shall be and the same is hereby declared to be of force for the said several purposes; *provided*, that the Mayor and Council may widen the footways on any or all the streets in said city, on the application in writing of the owners of the major part of the ground fronting on said street or streets, the admeasurement of said ground to be taken in feet parallel with the curb-stone; *provided further, nevertheless*, that Council shall have power in its own discretion to cause the pavements or footways on the northerly side of Water street, or any other part thereof, to be widened to any breadth not exceeding, in the whole, twelve feet.

Proviso. Widening of footways. See note to Sec. 114, ante.

Further proviso.

(*a*) The Street and Sewer Department passed a resolution prohibiting the erection of doorsteps on the sidewalk where a majority of the buildings were used for purposes other than ''solely as places of residences.'' The Court held the resolution invalid. It conflicted with the Charter provision, which allows steps to come out 4 feet from the building line. The Act of Assembly referred to in this section, and the city ordinance passed in pursuance to it, allow the four feet mentioned.

Mayor and Council of Wil. vs. Davis. (yr. 1910) Munic. Court. (Decision final.)

A resolution prohibiting the erection of porches 4 feet from the building line is void.

Mayor and Council of Wil. vs. McNabb. (yr. 1906) Munic. Court. (Decision final.)

Lifts may be built in the sidewalk if they do not come out more than 4 feet from the building line.

Mayor and Council of Wil. vs. Jenny. (yr. 1907) Munic. Court. (Decision final.)

WHARVES.[1]

Leasing of wharves or street landings on the Brandywine or Christiana. See note to Sec. 114, ante.

SEC. 125. The Council (*a*) are hereby declared to have, and shall have, authority in their discretion, to let or demise for any terms of years not exceeding ten, and subject to such rents (*b*) and reservations as they may deem expedient, the landings at the ends of the streets terminating upon the Brandywine creek or the Christiana creek; *provided*, that all demises here-

Proviso.

1. See 22 D. L. p. 5.

tofore made by the Council of any such landing as aforesaid, or permission given by the Council for making such improvements as aforesaid, are hereby confirmed and declared to be, and the same shall be, valid and effectual where they have not expired by their own limitation or in due course.

(*a*) The Council looks after the wharves, but the right belongs to the Street and Sewer Department. The case cited below, "b," affected the rents only.

(*b*) The Street and Sewer Department collected the rents till the decision of the Court in the case cited below.

Lore, C. J.: " * also a third suit brought by the same plaintiffs against the said Auditor of the City of Wilmington, being No. 220, May Term, 1900, * * in which the same issue was raised in regard to the rents collected from lessees of wharves along the river front at the ends of streets owned by the said City of Wilmington. * * After a very full presentation and discussion by counsel of the various statutes and ordinances bearing on the questions involved, * * judgment was rendered in favor of the defendant," &c., that is "The Mayor and Council."

Street and Sewer Department vs. Connell, 2 Penn. 571 at 572. (yr. 1900)

(See Sec. 31, paragraph five.)

CITY MAP.

Chapter 376, Volume 11. Map or plan of the city regulating streets adopted.

SEC. 126. The map or plan (*a*) of the city made under the requirements of Section 28, of Chapter 376, Vol. 11, Delaware Laws, showing all the streets, squares, lanes and public alleys of the said city, with their several dimensions, ascents and descents, and which, upon its completion and approval by the Council, was required to be signed by the Mayor and President of the Council, sealed with the corporate seal, and deposited and kept in the clerk's office, and a duplicate of which, in like manner signed and sealed, was required to be deposited and kept in the office for recording deeds in and for New Castle County, and which map and the duplicate thereof were by the said act made public records, and the same, or an office copy thereof, made competent evidence, shall be deemed and taken to be the true map, plan, or ground plot of said city; and all the streets, squares, lanes and alleys of the city shall be and remain as they shall be laid down upon said map, with such extensions and alterations as have been or may hereafter be made by authority of the laws of this State, [and with such extensions and alterations (*b*) as may be made from time to time by the board of directors of the Street and Sewer Department

Act of March 26, 1903. 22 D. L. 841.

Ascents and descents of streets. See note to Sec. 114. ante.

of said City of Wilmington.] The ascents and descents of all streets, lanes and alleys within the city shall be regulated and fixed conformably to said map; but the Council (*c*) may by ordinance (to be passed by a vote of two-thirds of all the members thereof for the time being) regulate and fix the ascents and descents of all streets, lanes and alleys within the said city, the ascents and descents of which are not marked and laid down on the aforesaid map or plan.

(*a*) See the case of Clark vs. City Wil., 5 Har. 243. (yr. 1849) as to the map or plan.

This section relates to two things: 1st, streets, with the power to extend, widen and change the course or direction of the same, at the pleasure of the Street and Sewer Department; and 2nd, the grades of streets, with power to change the same by a two-thirds vote of the Street and Sewer Department, when *within the city limits, and not on the map or plan.*

(*b*) Section 1 of the Street and Sewer Act gives the same powers as above as to the opening, &c., of streets, with an amendment, as to altering the course, or direction of, streets, but nothing as to grades. The case below shows the meaning of certain words.

Lore, C. J.: "The Court of General Sessions of the Peace and Jail Delivery * * shall have jurisdiction to lay out public roads, and to change or vacate the same. * * The Court decided that * * the word "change" could be construed to mean alter, but that the language of Sec. 5 restricted the word "change" * * to mean, change the *course of*. While there was authority given in the statute to lay out a new road, to change the course of a road already laid out, or to vacate a road, yet there was no power given therein to "*widen*" a road."

In re Petition Alston, et al. 1 Penn. 359 at 360. (yr. 1898)

(*c*) The Street and Sewer Department now.

STEAM-POWER OR HEATING PIPES UNDER STREETS.

See note to Sec. 114. ante. Steam-power or heating-pipes, etc.

SEC. 127. In case of the introduction into, through, under, or along the streets of the city, with the consent of the Council, (*a*) of steam-power or heating pipes, or underground telegraph, telephone of electric-light wires, the Council shall require, before such work shall commence, payment into the treasury of the city as a guarantee, or some other satisfactory security, that the streets shall not be unnecessarily torn up or obstructed, or kept or left out of repair, or travel unwarrantably impeded, and that the city shall be indemnified against loss, and it shall further require a bond, (*b*) with the personal security thereon, to "The Mayor and Council of Wilmington," with warrant of attorney for the entering judgment thereon, in such sum as the Council may deem proper,

City may require security bond. Warrant of attorney.

conditioned to indemnify and save harmless any and all persons, inhabitants of the said city, their persons, goods, chattels, lands and tenements from loss, damage or expense, from or by reason of the introduction into the streets of the said city of such steam-power or heating-pipes, or underground telegraph, telephone or electric-light pipes, which bond shall be held by the said city for the use of any and all persons who may be aggrieved or suffer loss, damage or expense by reason of the premises, to be accorded to them upon petition of the person aggrieved, under such restrictions as the Council may impose; and the Council may, when in its judgment, the public interests may so require, cause, at the expense of the parties laying or owning the same, such pipes or wires to be removed in whole or in part, or impose such restrictions upon the use thereof as it may think fit in reference to the public interests.

(*a*) Wherever the word "Council" appears in the section, insert "The Street and Sewer Department."

(*b*) The city should always take bonds of indemnity and take care that they be good.

Comegys, C. J.: The city "oftentimes authorizes by license, parties not in its employ, to do certain things * * as to open the public streets, * * and connect house drains * * with the public mains in the street taking from them * * indemnity to protect the city from suits, * * but that" (indemnity bonds) "does not relieve it as to the citizen of such public duty."

Anderson & Son vs. Mayor and Council of Wil., 8 Houst. 516 at 526-7. (yr. 1889)

STREET RAILWAYS.

Street railway tracks authorized. See note to Sec. 114, ante.

SEC. 128. The Council (*a*) of Wilmington shall, by a two-thirds vote of all the members thereof, have power and authority, by ordinance, to authorize the construction of railroad tracks, for the use of cars propelled either by steam or horse-power (*b*) for the purpose of affording business or manufacturing establishments within said city greater facilities for the shipment and receipt of freight on any of the streets, of said city; and in like manner may authorize such alteration in the grade (*c*) of any street as may be necessary for the proper construction and maintenance of such railway, and may further provide, in like manner, that any owner of land fronting upon such railway may construct a convenient siding or turnout into

Proviso. Expense. How borne.

and upon his premises; *provided, however*, that all expense of construction, grading, paving, keeping in repair, and removing such railway tracks or siding, shall be paid by the person or persons, firms or corporations for whose use or benefit the same shall be so constructed or thereafter used; *and provided further*, that nothing herein contained shall authorize the connection of any such railway track with the track or tracks of any railway company without an agreement in writing with such railway company, and when any connection shall be so made with the tracks of any such company, no other or greater right shall be acquired by the parties interested to have such connection maintained than shall be expressly stipulated in said agreement; *and provided further*, that nothing herein contained shall be taken to impair, take away or abridge the right of any person aggrieved by such action or license to his remedy at law or in equity for any such grievance or impairment of right sustained by him against the said persons, firms or corporations.

Further proviso. Railway connection.

Remedy at law.

(*a*) The Street and Sewer Department, now.

(*b*) This says "steam or horse power." As to the law where the motive power is specifically named, see the case of

Wil. C. Ry. Co. vs. Wil. & B. S. Ry. Co., 8 Del. Ch. 468 at 513. (yr. 1900)

(*c*) For a specific purpose the power is given to change grades. See Sec. 126, generally.

Council may regulate sidings. See note to Sec. 114.

SEC. 129. The Council (*a*) may by such ordinances provide and establish such regulations and restrictions as it may deem proper for grading, construction, paving, use and keeping in repair of such tracks and sidings; and may further at any time when, in its judgment, the further continuance of such tracks are subversive or destructive of the rights of the citizens to the full and proper use of any streets as common and public highways for their convenience as means of passage and modes of egress and regress to and fro, forthwith, at the proper cost and charges of the persons, firms or corporations locating the said railroad tracks or sidings, order and cause the entire or partial removal of such tracks and sidings.

Removal of sidings.

(*a*) The Street and Sewer Department, now.

PUMPS.

SEC. 130. The Council (*a*) shall inquire into the condition and direct the repairs of the several pumps and wells, within the city; and any pump or well which remains out of repair for three months next after notice given by direction of the Council to the owner or owners thereof, shall become forfeited to the corporation, to be held as its property and maintained and repaired at the public charge, or abandoned at its discretion.

Supervision of pumps and wells.

(*a*) The Water Department has full charge, now, of the water supply. Pumps and wells constituted our infant water works. The Act of 1799 gave the first authority to keep pumps and wells at the public charge for "use and service in extinguishing fires." The Act of 1809 referred to pumps and wells for supplying good and wholesome water, &c. See the cases of

Coyle vs. McIntyre, 7 Houst. 44 at 77. (yr. 1884)
Weldin vs. Wilmington, 3 Penn. 472 at 475. (yr. 1902)

PARTY WALLS AND FENCES.

SEC. 131. The City Council (*a*) shall, from time to time, appoint three or more discreet and skillful persons to be City Surveyors and Regulators, (*b*) who, upon application made to them, shall enter upon any lands in order to set out the foundations (*c*) and regulate the walls to be built between party and party within the said city, as to the breadth or thickness thereof, which foundation shall be laid equally upon the lands of the persons between whom such party wall is to be made; and the first builder shall be reimbursed one moiety of the charge of such party wall, or for so much thereof as the next builder shall have occasion to make use of before such next builder shall use or break into said wall (*d*) and the charge or value thereof shall be determined by the said regulators, or any two of them. Either party may appeal to the Council at its next stated meeting, which shall finally adjust the matter and make such order for the payment of costs as it shall deem just.

Appointment of surveyors and regulators.

Regulation of party walls and foundations.

Using party wall and fixing value thereof.

Appeals to City Council.

(*a*) These men, before the creation of the various Departments, had charge of all landed matters. The Departments, now, can appoint their own engineers and assistants. The Council still appoints the engineering force of the City Surveying Department.

(*b*) *By the Court*: "The powers conferred on the city regulators are contained in the Act of Assembly of June 13, 1772. It is the power to regulate streets and party walls, * *

sec. 8 provides for an appeal from the order and direction of the regulators to the City Council.''

Nivin vs. Stevens, 5 Har. 272 at 274-5. (yr. 1850)

Gilpin, C. J.: ''The object of the statute referred to was to provide for the appointment of Surveyors and Regulators in the City of Wilmington to set out the foundations, prescribing their depth and thickness, and to regulate the walls, their breadth, or thickness according to the height and dimensions of the buildings to be erected against them, and the uses to which they were to be devoted, between persons owning adjoining lots, and that the foundation of the walls in such cases, should be laid equally on the lands of the adjoining owners, the person building to be reimbursed one-half of the expense of such party wall, or so much thereof as the adjoining lot owner should have occasion to make use of in any building by him afterward erected adjoining it, before using the same, the expense and value of which was also to be determined and fixed by the regulators provided for in the act.''

Pierce vs. Lemon, 2 Houst. 519 at 521. (yr. 1862)

(*c*) *Gilpin, C. J.*: '' * the question arises'' (if the wall be a party wall) ''if the defendant had the right to build on plaintiff's foundation without first complying with the provisions of the Charter of Wilmington.'' 503, and he stated if the wall be a party wall, that one has ''no right to build on it without first having the value regulated, and paying the value, &c.''

O'Daniel vs. Baker's Union, 4 Houst. 488 at 504. (yr. 1873)

This power is confined to the depth and thickness, &c., of foundation and party walls, and they have no power to adjudge questions of *title* between lot owners.

Harrington, Judge: ''This new power claimed for the city regulators is so extensive in its bearing on the legal rights of property holders in Wilmington that the Court will be extremely cautious before they recognize it to exist, and would require the grant of such power by the Legislature to be extremely plain and positive. * * In our opinion this act does not confer the power which is claimed for the regulators in this case, of deciding the legal titles of the parties in a *disputed* line of property.''

Nivin vs. Stevens, 5 Har. 272 at 275. (yr. 1850)

(*d*) *Gilpin, C. J.*: ''If they had complied with the statute, they had the right to use said walls, but not *before* the value thereof had been assessed by the regulators and the same had been paid, or they would be liable to a penalty of fifty dollars.''

O'Daniel vs. Bakers' Union, 4 Houst. 488 at 503. (yr. 1873)

But if an adjoining lot owner uses, or bricks, into a party wall without paying for it, an action will not lie against him before a justice of the peace for compensation.

Hawkins d. b. a. vs. Mendenhall p. b. r., 3 Houst. 216. (yr. 1865)

One who has built a party or division wall, (the same being 4½ inches on the lot of the adjoining owner) may open windows in the wall. The other adjoining owner may close them with blinds, or in any other way he desires.

Pierce vs. Lemon, 2 Houst. 519 at 521-2. (yr. 1862)

On the question of ancient lights, regardless of party wall windows, see the cases of

Clawson vs. Primrose, 4 Del. Ch. 643 at 652. (yr. 1873) (holding the doctrine to be in force in Delaware) and

Hulley vs. Sec. T. & S. Dep. Co., 5 Del. Ch. 578 at 586-7. (yr. 1885) practically overruling it, though the Chancellor was not required to do so because of the conflicting character of the evidence as to the shutting out

of light. The Chancellor said he would neither affirm it nor overrule it.

As to the question of lateral support, in the case below, the Court, *Comegys, C. J.*, laid down the law as follows: If one dig on his ground, and the earth of the adjoining owner fall or cave in because of its own natural weight, the person digging must give it lateral support, or he will be liable in damages; if the earth cave in because of an artificial weight, (such as a house) on it, the person digging is not liable.

Stimmel vs. Brown, 7 Houst. 219 at 223. (yr. 1885)

Penalty for violation.

SEC. 132. If any person shall begin or lay the foundation of any party wall or other building, as aforesaid, except in conformity to the provisions of the foregoing section, every such person, as well employer as master-builder, shall, for such offense, forfeit and pay a fine of fifty dollars. (*a*)

(*a*) See Sec. 131, note "d," second paragraph.

Regulation of partition fences.

SEC. 133. The City Surveyors and Regulators (*a*) or any two of them, shall regulate all partition fences (*b*) within said city; such fences shall be made in the manner generally used and kept in good repair at the equal expense of the parties, to be recoverable in the Municipal Court (*c*) as debts of like amount are recoverable before a justice of the peace; *provided*, that the costs of making the same do not exceed twenty-five dollars for every hundred feet in length, and so in proportion, unless the owners or possessors, between whom such fence is erected, otherwise agree.

(*a*) See note "a," Sec. 131.

(*b*) As to the property or ownership of a fence, torn down, the Court said:

Lore, C. J.: "If the fence which was torn down and removed was a partition fence between the land of these two adjoining owners, it is presumed to be the common property of both unless the contrary is shown. If it is proved to have been originally built upon the land of one of them, it is his; but if it were built equally upon the land of both, though at their joint expense, each is the owner in severalty, of the part standing on his land."

Quillen vs. Betts, 1 Penn. 53 at 59. (yr. 1897)

(*c*) The old Mayor's Court established under the Constitution of 1831, had jurisdiction of *civil* as well as criminal matters, and the Act of 1883, creating the Municipal Court (Sec. 15) gives it jurisdiction to try and determine offenses against the *laws of the city*.

By the Court: " * the law of 1832, which gives the city court jurisdiction in all cases of assumpsit, debt, covenant, trover, replevin and trespass," &c.

Nivin vs. Stevens, 5 Har. 272 at 275. (yr. 1850)

DRAINAGE.[1]

City drainage.

Regulation.

Costs. How borne.

Act of April 8, 1885. 17 D. L. 884.

SEC. 134. The Council shall have the entire jurisdiction and control, within the limits of said city, of the drainage (*a*) thereof, and may pass ordinances for the opening of gutters, drains and sewers within the limits thereof, and the regulating and maintaining, cleansing, and keeping the same and the natural water courses, runs and rivulets within said limits open, clear and unobstructed, and for that purpose may authorize the entry upon private (*b*) land, and by general regulations prescribe the mode in which they shall be opened, maintained, cleansed, and kept opened and unobstructed, and who shall bear the expense thereof, and may, in its discretion, assess the costs thereof upon the persons and property, real and personal, of those particularly benefited thereby, or of those owning or holding lands through or along which said sewers, drains or water courses shall flow or pass, and prescribe the mode of collection thereof. *Provided*, that nothing herein contained shall be construed to authorize the taking of private property for public use without just compensation. [The jurisdiction and control of the Council as herein above set forth, shall extend to and include any and all private drains and sewers laid or to be laid under any of the streets, lanes or highways of the City of Wilmington, whether by individuals or corporations now, or that may hereafter be existing, the rights, powers, privileges and franchises of which shall be subject to the provisions and regulations in this section contained and of any ordinances of said Council passed in conformity thereto; and the Council may, if in their judgment advisable, authorize and empower any corporation or association of individuals to drain and sewer said City of Wilmington, granting for that purpose such rights, franchises, privileges, emoluments and compensation as shall be proper, and may pass ordinances confirming and regulating the same.]

(*a*) This section is set out in full (and also the ordinance passed

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1. Entire jurisdiction and control of the sewers and drains of the city is now vested in the Board of Directors of the Street and Sewer Department by Act entitled "An Act in relation to the Streets and Sewers of the City of Wilmington," passed April 20, 1887. (Vol. 18, ch. 188), p. 224 of this volume.

pursuant to it) in the case of Murphy et al vs. Wil., 6 Houst. at 131.

(*b*) The Street and Sewer Department, which now has charge of all the matters contained in this section, has jurisdiction from "building line to building line," and the "same * * powers * * as are now held and exercised by "The Council." (Secs. 1 and 4 of the Street and Sewer Act). This would seem to give the Department the power this section gave "The Council," to go upon private property, *back* of the "building line."

Council may enter upon and occupy lands.

SEC. 135. The City Council shall also have the right to alter and change the course or direction of any of the natural water courses, (*a*) runs or rivulets within the limits of said city, and for that purpose to enter upon, take and occupy lands, tenements and hereditaments. Before any property or ground shall be taken or occupied for such purpose the owner or owners of such property or ground shall be paid or tendered such damages as they shall be respectively entitled to receive, which damages shall be assessed, paid, or tendered in the same manner as in the case of the taking of ground or property for extending, widening, laying out, or opening of streets. The cost of such alteration or change shall be estimated, and any allotment, apportionment, assessment, or division of any portion thereof, as the freeholders may deem just and reasonable, shall be made upon and among the persons, properties, interests and estates specially benefited by such alteration or change, and collected and made a lien in the mode provided in the case of extending, widening, laying out or opening any street, as provided for in this act.

Damages.

(*a*) The city is not liable for diverting a private water course (Shipley Run) which was worthless and injurious to its owners, and the neighborhood through which it passed, especially when the owners stood by in silence and saw it done. But it could not divert a natural water course, not objectionable, without condemnation and compensation.
Murphy et al vs. Wil., 6 Houst. 108 at 132-3. (yr. 1880)

BOARD OF HEALTH.

Board of Health.

SEC. 136. It shall be the duty of the Mayor of said city, and he is hereby authorized and directed, * * * on the first Thursday in May, [A. D. 1898, and biennially thereafter] to appoint a Board of Health (*a*) for said city, which board shall consist of the Port Physician, two other physicians, one practical plumber and one general business man. The Chief Engineer of the Surveying Department of said city shall be *ex-*

Act of March 26, 1897. 20 D. L. 672.

How composed.

Officers.

officio a member of the Board of Health without salary as such. [* *] The said board shall appoint its own president and treasurer from among its members, and shall have power and authority to appoint two executive officers for the term of one year who shall be vested with like power as city constables.

Duty of Secretary.

The secretary of the board shall keep the minutes of the meetings of the board, and shall perform all such duties as shall be assigned to him by said board.[1]

Quorum.

Vacancies.

Three members shall constitute a quorum to do business. The said Mayor shall have power to fill all vacancies in said board occurring by death or otherwise, and may remove, for sufficient cause, any member of said board which it is his duty to appoint.

(*a*) *Nicholson, Ch.*: "Section 136 of the Charter of the City of Wilmington provides for the appointment of a Board of Health for the City of Wilmington, which Board shall consist of the port physician, two other physicians, one practical plumber and one general business man, the chief engineer of the Surveying Department of the said city, being ex officio, a member of said Board."

Liebig Mfg. Co. vs. Wales et al, 8 Del. Ch. 26 at 34. (yr. 1896)

General powers.

SEC. 137. The said board shall be invested with all the powers and authority which the Council (*a*) might or could exercise relative to the object of their institution, and with all powers and authority conferred and duties enjoined upon members of Boards of Health by the laws of the State,[2] and

Power respecting nuisances.

by the ordinances of said city, for the preservation of the public health within said city, or within one mile thereof.

(*a*) The phrase "all the powers and authority which the Council might or could exercise," &c., does not confer legislative powers upon the Board of Health. Sec. 31 of the Charter gives "The Council" the power to enact ordinances concerning the public health, but this power is not transferred to the Board of Health by the above phrase.

Mayor and Council of Wil. vs. Reed. (yr. 1910) Munic. Court. (Decision final.)

[See brief of H. H. Ward, Esq., in the case of Hartman vs. Wil., 1 Marv. 215 at pp. 216-219 (yr. 1894) to the same effect.]

Act of March 25, 1907. 24 D. L. 347.

[The said Board of Health shall have full control and management of the City Crematory and shall make and award

1. For powers conferred upon local Boards of Health see Vol. 16, p. 346 as amended by 22 D. L. 628.

2. Returns of deaths to be made to the Secretary of the State Board of Health. See 25 D. L. 117.

all contracts for the collection and disposal of the garbage and offal of the city, and shall award all contracts to the lowest and best bidder in the manner now prescribed by ordinance.] (a) And the said Board of Health upon complaint that a nuisance (b) has been created, erected or continued and is continued within said city, or within one mile of the boundaries thereof, which may prove injurious to the health of the inhabitants (c) thereof, shall hear and determine such complaint, and, if necessary, view and examine (d) the matter or thing complained of; and if the said board shall adjudge (e) the place or thing complained of to be a nuisance whereby the health of the inhabitants of said city is or may be injured, the said board (f) shall give directions to cleanse, remove, abate or remedy the same to the person or persons causing or producing such nuisance, or to the owner or owners, agents, tenants or occupier of the premises whereon the said nuisance exists;

Powers of Board of Health.

* * * * * * * * * * * *

Repealed by Sec. 2, Act of March 25, 1907. 24 D. L. 365.

and if the person or persons, owner or owners, agents, tenants or occupants to whom such direction is given shall not observe and fulfill the same within the time therein prescribed by the said board, the said board shall have power to order the said directions to be carried into effect (g) by some officer of the board or other person to whom the service may be committed, and the expenses thereof shall be paid by the person to whom the direction was originally given; but if the same shall not be paid by said person on demand, the same shall be paid by the treasurer of the board, who shall have the right to recover the same with interest and costs from the person who ought to have paid the same as aforesaid, as debts of like amount are recoverable. [And if the expense incurred by the Board of Health in making the aforesaid connections together with any other expense that may be incurred by the said Board of Health in the abatement of any nuisance be not paid after the recovering of judgment thereof then the same shall become a lien against the property or properties on which said work has been performed and shall be entered in a book to be kept in the City Auditor's office, which book shall be known as a lien book. The amount of said lien shall bear interest at the rate of six per cent. from the date of said entry; if, however, any

Act of February 25, 1897 20 D. L. 664.

Lien of judgments obtained by Board of Health in abatement of nuisance.

Lien book.

After one year lands may be sold.

such lien or part of such lien shall remain unpaid at the end of one year after the date of entry as aforesaid, it shall be the duty of the Mayor of the city to issue his warrant, directed to the said Board of Health of the City of Wilmington, commanding them to levy the same, with interest thereon accrued and all cost thereon, upon the grounds or buildings of such owner or owners as aforesaid, which such grounds or buildings or any part thereof shall be sold by the said Board of Health at public auction after thirty days notice in two newspapers published in said city, and a deed from the Mayor and Council of Wilmington shall convey to the purchaser of such grounds or buildings as full and complete a title to said premises, in fee simple or otherwise, as if the same were executed by said owner thereof. And it shall be the duty of the said Board of Health out of the purchase money of the said premises so sold as aforesaid, to pay all costs arising from said process and sale to the parties entitled thereto respectively and to retain the amount of such lien with accrued interest thereon as aforesaid. The residue of said purchase money shall be immediately deposited by the said Board of Health in the Union National Bank of said city to the credit of the owner or owners of the property or properties so sold.

Deed.

Application of proceeds.

(*a*) The awarding of contracts used to be by "The Council." When the Board awards a contract it is the Mayor's duty to sign, and affix the corporate seal to it. His duty is a ministerial one.

McCormick vs. Fisher, 5 Penn. 273 at 276. (yr. 1903) (See Sec. 7, "a" of the Charter.)

(*b*) "Any trade or business carried on in a town, or populous neighborhood, or near a public road or highway, which produces noxious or offensive smells, to the annoyance of the neighborhood, or persons travelling along the public road, is a *common nuisance*, and is indictable. *It is not necessary that the smells should be injurious to health.* It is sufficient, if they be offensive to the senses."

State vs. Wetherall & Dunsey, 5 Har. 487. (yr. 1854)

State vs. Luce et al, 9 Houst. 396. (yr. 1885), quoting the above. (Fertilizer from fish.)

Liebig Mfg. Co. vs. Wales et al, 8 Del. Ch. 26. (yr. 1896) (Fertilizer.)

The Legislature, only, can authorize a nuisance.

"The Town Commissioners of an incorporated town have no power to legalize a nuisance, unless specially authorized so to do by an Act of the Legislature."

State vs. Luce et al, 9 Houst. 396. (yr. 1885) (Syllabus.)

(c) The word "inhabitants" does not mean *all* the people.

Comegys, C. J.: "When with reference to an alleged nuisance, the people or citizens of a neighborhood, or the public

are mentioned, it does not mean *all* the people, or of the public, but only such a considerable number of them as to show that more than a few merely are meant. * * The term ''public'' does not mean all the people, nor most of the people, nor very many of the people of a place; but so many of them as contra-distinguishes them from a few. * * No general definition can be given to denote precisely what is meant by ''few'' or ''many,'' nor can any be precisely given of the limits expressed by the term ''neighborhood.'' ''Few'' and ''many'' are to be considered with reference to the surroundings * * if the annoyance extended to those generally about there'' (the neighborhood), ''the owner would be indictable, although in point of fact only a small neighborhood of the town, for example a single square, where there were many squares, was within the scope of the foul smells.''

State vs. Luce (above) p. 399.

(*d*) *Nicholson, Ch.*: ''It is true * * ''that the Board of Health * * did not at said time view the matter or thing complained of.'' * * But this is not necessary for ''the necessity of a view of the thing or place complained of, is plainly left to their discretion.''

Liebig Mfg. Co. vs. Wales et al, 8 Del. Ch. 26 at 50. (yr. 1896)

(*e*) The Board's decision is not a judgment to which a writ of certiorari will lie.

Cullen, J.: ''The result of the action of the Board of Health is not a judgment * * the Board of Health acts upon these matters like a Grand Jury, for instance, when there is a charge against a person—on one side of the matter. * * (230). Their action is not a legal judgment such as is contemplated under the law, to which a certiorari at common law may issue.'' (See paragraph 4, ''a,'' below).

Hartman vs. Wil., 1 Marv. 215 at 231. (yr. 1894)

(*f*) This says the ''said Board'' shall give directions, &c. It should be by the *Board.*

Lore, C. J.: ''It is not set forth in the record of the Justice that the party who *made* the complaint was a member of the Board of Health * * authorized to act for said Board. The judgment is * * reversed in that ground.''

Johnson vs. State, 2 Marv. 372 at 373. (yr. 1895)

(A person, in the above case, made a complaint before a Justice of the Peace. He was not a member of the Board of Health authorized to act for the Board.)

(*g*) If the Board decides to abate a nuisance, an injunction will not, as a general rule, be granted to stop the Board.

Nicholson, Ch.: ''A patient examination of the whole course of decisions * * has left me in no doubt that a Court of Equity * * will decline to restrain the proposed action'' (abate the nuisance), ''unless it is made to appear clearly that it has acted wantonly and in bad faith or has exceeded its jurisdiction.''

Liebig Mfg. Co. vs. Wales et al, 8 Del. Ch. 26 at 40. (yr. 1896)

That in all cases where complaint has been made in respect to privy wells it shall be the duty of the Board of Health for such district in which said nuisance exists to have said privy wells thoroughly cleaned to the bottom within ten days of receipt of such complaint being made to said Board of Privy wells.

Duty of executive officer.

Health, and it shall be the duty of the executive officer having the said district in charge to see to it that the work is done in manner and form as above provided. And in case the executive officer refuses or neglects to discharge his duty as provided for in this act the Board of Health shall at once dismiss him from his office.]

Refusal to comply with regulations of Board.

Penalties.

Any owner or owners, agent, tenant or occupant of the premises, who shall fail, neglect, omit, or refuse to comply with the directions of said board, as aforesaid, shall, in addition to the penalties above mentioned, forfeit and pay a fine of not less than one dollar nor more than twenty dollars for every such offense, to be recovered in the Municipal Court of said city in the name of The Mayor and Council of Wilmington, and in default of the payment thereof shall be committed to jail until said fine and costs are paid or otherwise discharged by law. From the judgment of said court in such cases there shall be no appeal. (*a*)

(*a*) There is no appeal, and we have shown certiorari will not lie. An injunction will lie when the Board acts in gross bad faith, (or fraudulently), and also where it exceeds its jurisdiction; and in either case the members of the Board will be individually liable in damages, that is, when they act fraudulently, or in excess of their jurisdiction.

Cullen, J.: "He has an impartial, full and complete remedy. * * He may appeal to the Chancellor for an injunction to stay the action, and commence an action whereby his rights may be determined by proceedings in Chancery. If he sees fit to allow the matter to go on, and if the Board of Health have violated the powers vested in them in removing the matter, then they become personally liable."

Hartman vs. Wil., 1 Marv. 215 at 231. (yr. 1894)

Nicholson, Ch.: " * the adjudication by the Board of the fact of a nuisance would not protect it as would the judgment of the Court, and in all cases it would act at its peril. * * And this is emphatically stated to be the law, in the opinion of the Superior Court of this State, in the case of Hartman vs. Mayor and Council of Wilmington, 1 Marvel 215."

Liebig Mfg. Co. vs. Wales et al, 8 Del. Ch. 26 at 39. (yr. 1896)

(Sec. 137 is set out in full in the Liebig case on p. 35.)

Act of March 25, 1907. 24 D. L. 364.

Board of Health may order certain property to be connected with sewers.

[Whenever the said Board of Health shall deem it necessary for the preservation of the public health, for the improvement of the sanitary condition, and for the better drainage of the City of Wilmington, that any lot or parcel of land, house, building or structure of any kind whatsoever, situate in the City of Wilmington, unconnected with a sewer, should be connected therewith, the said Board shall have

power to give directions to the owner or owners, agent or agents, of such premises that the same shall be connected by suitable drains with a public or private sewer within thirty days after the date of such notice, if there be any such sewer to which said premises shall or may have access, so that all the sewerage and house drainage and any other noxious drainage whatsoever and all stagnant, offensive or unwholesome water shall be removed from said premises. If such owner or owners, agent or agents, shall neglect or refuse to comply with said directions, the said Board of Health shall have power and authority to cause said lot or parcel of land, house, or building or structure to be connected with such sewer and to collect the cost thereof in the name of The Mayor and Council of Wilmington, from the tenant or tenants of such lot or parcel of land, house, building or structure, by attaching the rents due to said owner or owners, agent or agents from such tenant; and such tenant, upon making payment of the money so attached shall be credited with such amount on account of the rent due to his or her landlord. In case such tenant shall neglect or refuse to pay the amount so attached within sixty days after attachment, such amount so attached shall be collected from such tenant in the same manner as is now provided by law for the collection of rents by distraint and sale of goods and chattels. Should the owner or owners of such house, building or structure reside therein, then and in such case, the said Board shall have power and authority to collect the amount so due as aforesaid in the manner in this Section provided by distraint and sale of goods and chattels.]

Neglect of owner Board may connect said property and collect costs thereof.

Process of collection.

Process against tenant.

Process against owner.

Sec. 138. Whenever the said Board of Health shall declare any street, lane, alley, vacant lot, or other place belonging to the City of Wilmington to be a nuisance, injurious to the health of the inhabitants thereof, the said board shall have power to notify the [Street Commissioner] of said city to abate and remove said nuisance within such time as said board may in such direction designate. If said [Street Commissioner] shall neglect, omit or refuse to comply with such directions as aforesaid, the Board of Health shall have

Further powers respecting nuisances.

Act of April 13, 1885.

power and authority to have the same abated, removed or cleansed by such officer or person as said board may appoint, and the cost thereof, being approved by the board as aforesaid, shall be paid by the Council of said city in the same manner as other bills are paid by said city, and the bills so paid as aforesaid shall by said Council be charged to the appropriation for cleaning and repairing streets of said city.

NOTE.—Secs. 139, 140, 141, 142, 143, 144, 145, 146, 147 were the charter of the Board of Education which expired by limitation on April 13, 1903. For an act to provide for the organization and control of the Public Schools of the City of Wilmington see Act of April 6, 1905, 23 D. L., 140, page 419 of this vol.

FINES, FORFEITURES AND PENALTIES.

Fines. Their enforcement and disposal.

SEC. 148. All fines and forfeitures incurred under this act, or under any ordinance of said city, shall, except in cases otherwise provided for by law,[1] (*a*) be enforced, collected and paid into the city treasury for the use of the corporation.

(*a*) The clause, "except in cases otherwise provided for by law," means not only laws *now* in existence, but such as may be passed in the *future*.

Lore, C. J.: "That the exception applies not only to laws then in existence, but also to such as might be passed thereafter in pursuance thereof."

Law and Order Society vs. Mayor and Council of Wil., 4 Penn. 366 at 367. (yr. 1903)

An act passed May 26, 1897, gave the Law and Order Society one-half of all fines, &c., collected where conviction was secured on evidence furnished by it. Persons were convicted on evidence as above for keeping disorderly houses, and selling liquor without a license. The Court held the above clause did not bar the Society, i. e., the Society was entitled to one-half of the said fines.

Printed copies of ordinances, etc., evidence.

SEC. 149. The printed copies of the ordinances and resolutions of the Council of Wilmington, whether of a public or private nature, published by authority of Council, shall be admitted as evidence (*a*) thereof in all courts and all occasions;

1. Law and Order Society shall receive one half of fines, penalties and forfeitures in certain cases. See p. 535 of this volume.

and in pleading it shall not be necessary to recite or draw them out at large. (*b*)

(*a*) In the case below cited, the Charter, Laws and Ordinances of the city had not been formally offered in evidence. The City Solicitor started to read from them, and upon objection, the Court stopped him.

He "contended that under the Charter of said city, Sec. 149, such records were in evidence." p. (361).

Cullen, J.: "This record" (Charter, Laws and Ordinances) "might have been put in evidence under the section you read, but it has not been offered. If not offered, it is not evidence." (361)

Houston, J.: "A matter does not jump in evidence. You must put it in evidence." (361)

Benson vs. Mayor and Council of Wil., 9 Houst. 359. (yr. 1893)

Ordinances were merely *offered* in evidence in
McCaffrey vs. Thomas, 4 Penn. 437 at 438. (yr. 1903)
MacFeat's Admr. vs. P., W. & B. R. R. Co., 5 Penn. 52 at 58. (yr. 1904)

Ordinances were *read and offered* in evidence in
Giles vs. Diamond State, 7 Houst. 453 at 454. (yr. 1887)
Flanagan's Admr. vs. Wil., 4 Houst. 548 at 553. (yr. 1873)

"In an action for damages for false imprisonment, the secretary of the town council testified that a certain book contained the ordinances of the said town as regularly adopted at a meeting of the Council.

Held that the ordinance was admissible, and that it was not incumbent upon the defendant to show that the ordinance was authorized by the act of incorporation of said town."

McCaffrey vs. Thomas, 4 Penn. 437. (yr. 1903)

(*b*) *Wolcott, Ch.*: " * the Act of Assembly from which the" (city) * * "derives its existence, and the ordinances enacted in pursuance thereof, are as much the subjects of legitimate inquiry as if they were literally incorporated in the pleadings before us."

Mayor and Council of Wil. vs. Vandegrift, 1 Marv. 5 at 12. (yr. 1893)

In the case below cited it was held an ordinance did not have to be specifically referred to in the pleadings.

"We offer in evidence the City Ordinances, Sec. 12, p. 376, in reference to speed of trains passing through the city." (58)

"Objected to * * on the ground that in order to introduce in evidence an ordinance of a municipality, said ordinance should be identified and described with particularity in the pleadings." (58)

Pennewill, J.: "We think the Ordinance admissible."

MacFeat's Admr. vs. P., W. & B. R. R. Co., 5 Penn. 52 at 58. (yr. 1904)

Validity of city obligations.

SEC. 150. Nothing in this act shall be construed to affect or in any manner impair the existing provisions of law relating to the "sinking fund" for the payment of the city debt of Wilmington, or the validity of any existing debt or security of the said city or of the Board of Public Education in Wilmington, or the existing provisions of law for the payment thereof.

Repealing certain acts.

Expired.

SEC. 151. All acts or parts of acts inconsistent with or manifestly superseded and supplied by the provisions of this act are hereby repealed. * * * * * *

* * * * * * * * * * * *

SEC. 152. This act shall be deemed and taken to be a public act, (a) and shall be construed most favorably for the corporation. (b)

(a) *Spruance, J.*: "The Courts take judicial notice of the general, public statutes of this State, &c." 134.

"An act creating a municipal corporation is such a statute." 132.

Downs vs. Com's of Smyrna, 2 Penn. 132 (1899)

The Court also held that Sec. 6, p. 791 Rev. Code, dispensing with proof of the incorporation and existence of a corporation, unless a denial thereof appeared in an affidavit filed for that purpose, applied to municipal corporations.

(b) It is to be construed most favorably for the corporation, but,

Saulsbury, Ch.: "Being the mere creature of the law, it possesses only those properties which the Charter of its creation confers upon it, either expressly or as incidental to its very existence."

Coyle vs. McIntire, 7 Houst. 44 at 88. (yr. 1884)

PART III

Acts

OF THE

General Assembly

Acts of the General Assembly

INCLUDING THE SESSION OF 1909.

CHAPTER I.

ACTS SUPPLEMENTARY TO THE CHARTER.

	Page
1. Act to Authorize the Establishment of Public Curb-stone Markets	149
2. Act Empowering the Board of Directors of the Street and Sewer Department to Adopt Certain Rules in Relation to House Drainage..	155
3. Permit for Erection or Repair of Building to be Withheld Until All Taxes are Paid	156

A SUPPLEMENT to "An Act to revise and consolidate the Statutes of the City of Wilmington," passed at Dover, April 13th, 1883.

Curbstone markets authorized.

SECTION 1. That the Council of Wilmington be, and the same is hereby authorized to establish within the city aforesaid public curb-stone markets (a) upon such streets as the said Council may, in its discretion, deem proper, such curb-stone markets to be occupied solely by farmers and truckers whose principal business is the raising of farm productions or truck, and by none others. Such curb-stone markets shall be used by such farmers, or truckers, exclusively, for the sale of fruit, vegetables, fowls and other farm products, and meats raised or fed as hereinafter provided, on land occupied by such farmers or truckers, either as owners, lessees or farmers upon the share. The said Council shall have the power

Exclusively for farmers and truckers.

General regulation.

to prescribe the times of the holding of the said market, and to provide for the general regulation of the same, agreeably to the provisions of this Act of General Assembly. Such curb-stone markets shall be known as the farmers' and truckers' curb-stone markets. The public curb-stone markets now existing on King and Madison streets, in the said City of Wilmington, shall be deemed and taken to be farmers' and truckers' curb-stone markets for all the purposes of this act.

(*a*) The definition of "curbstone markets" is as follows:
Paynter, J.: "The market embraces that portion occupied by the buyers as well as the sellers. The latter could only occupy three feet, while the purchasers could use any part of the sidewalk, making the space between the curbstone and the building line the entire market for both sellers and purchasers."
State vs. Wood. (yr. 1888) unreported.

Spaces.

SEC. 2. That it shall be the duty of the said Council during the month of April, A. D. 1885, to lay off and allot spaces (*a*) on either or both sides of the streets now used, or hereafter to be used, for farmers' and truckers' curb-stone markets in the said city; such spaces shall not exceed eight feet, nor be less than six feet in length, and shall be marked and numbered on the top of the curb, and when such spaces shall have been so laid off and numbered, a plan thereof shall be made and filed with the Clerk of the Council, and the same shall be a public record.

Size.

Plan.

(*a*) The allotment of spaces has no bearing upon the "market."
Paynter, J.: "The direction in the second section of the act for the allotment of spaces on the sidewalk to be occupied by the farmers described in the act, is no limitation of the market itself, but a regulation merely by statute of the space to be assigned to each of them for the sale of his articles."
State vs. Wood. (yr. 1888) unreported.

Conditions.

SEC. 3. From and after the 30th day of April, A. D. 1885, the said spaces shall not be used for market purposes until the following conditions are complied with, viz: The person desiring to occupy any such spaces, shall apply to the Clerk of the Market therefor, and if the same has not been theretofore awarded, the said clerk shall issue a certificate (*a*) permitting such person to occupy such space for one year from the first day of May, A. D. 1885, upon the receipt of two dollars for the use of the city (*b*) and the further payment

Certificate.

Fee for city.

of twenty-five cents to the said clerk. The person to whom any such space shall be so allotted shall, in addition, pay to the City Clerk for the use of the owner of the property, or properties, in front of which such space shall be, the sum of thirty cents, if demanded by said owner, or owners, for each and every foot, for the like period of one year for the space so allotted. When such annual sums shall have been paid as hereinbefore prescribed, the person paying the same and receiving the certificate aforesaid, shall, subject to all the provisions of this act, and to such other rules (*c*) and regulations as the said Council under this act may prescribe, be entitled to the free use of such space for market purposes for the period of one year from the first day of May, A. D. 1885. No person shall have allotted to him upon any street now or hereafter used as such market, more than two spaces for any one year, and such spaces shall not both be upon the same side of any such streets; and the certificate hereinbefore provided to be given, shall have plainly expressed upon its face, the number of the space or spaces allotted; and spaces not allotted, within thirty days after the times specified for such allotments, may be let for fractional terms at *pro rata* rates.

Fee to Clerk.

Property owners may demand 30 cents per foot in front of their property.

No person shall hold more than two places on any street in one year.

Spaces let for fractional terms.

(*a*) This certificate, or license, not being "dependent upon the extent of" one's "business," it is not necessary that notice be given.
Nicholson, Ch.: "In such cases, the Legislature * * fixes the amount, and that is the end of the matter."
English vs. Mayor and Council of Wil., 2 Marv. 63 at 92. (yr. 1894)

(*b*) The market rents belong to "The Mayor and Council," and not to the Street and Sewer Department.
Street and Sewer Dept. vs. Connell, 2 Penn. 571 at 572. (yr. 1900)
(See Sec. 80, paragraph "c," "a.")

(*c*) As to the legal meaning of "rules," see the case of Morris et al vs. Pilot Com's., 7 Del. Ch. 136. (yr. 1894). Sec. 76, "a" of the Charter.

SEC. 4. It shall be the duty of the Clerk of the Market to make and keep in a book, to be by the said Council provided, an accurate record of all spaces allotted, with the name of the person and the time for which such person is entitled to the use thereof. All the space allotted under the provisions of Section 3 of this Act, as well as any not theretofore allotted, shall be reallotted in the manner provided for in the said last mentioned section, in the Month of April,

Duty of Clerk.

Spaces, when allotted.

A. D. 1886, and in like manner annually re-allotted in the said month of April in each and every year thereafter, and the terms for which such allotment shall be made shall be for the term of one year from the 30th day of April in each year.

Restrictions as to sales of meat.

[SEC. 5. That no person shall expose for sale in any farmers' and truckers' curb-stone market, now or hereafter existing within the limits of the City of Wilmington, any beef, or pork, or mutton, unless the same shall have been fed upon lands occupied by such person for a period of at least ninety days before slaughtering the same. No person shall expose for sale in any such market, any veal meat, except such be the product of such person's own cows upon lands occupied by such person.(a) No person shall expose for sale in any such market more than six head of beef cattle in any twelve consecutive months. Whosoever shall offend against the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, by the Court of General Sessions of the Peace and Jail Delivery for the County of New Castle, shall forfeit and pay a fine of not less than fifty nor more than one hundred dollars, or imprisoned in the county jail for a period not exceeding thirty days or both, at the discretion of the court.]

Act of March 10, 1887. 18 D. L. 340.

Penalty.

(a) This whole Act has for its purpose, that farmers shall sell their own meat, and thereby know what they are selling. It encourages farmers to go into the business of farming "for the purpose of preparing" meats "for sale or market." In 1875, a farmer was prosecuted under an ordinance for farming "for the purpose of preparing" meats "for sale or market." If he did it as "incidental" to his business of general farming, he did not violate any law, but, if he farmed for the "purpose of," &c., he broke the law. It is needless to add the jury acquitted the farmer, and the ordinance that was intended to give butchers a monopoly in the trade was repealed.

Homewood vs. Wil., 5 Houst. 123 at 126. (yr. 1875)

See the case of State vs. Kumpel, Jr., 2 Marv. 464. (yr. 1889) where it was held that a butcher who killed cattle on his own land, and sold the same to his customers on the road from his wagon, was not required to take out a peddler's license under the State law.

Oath taken before selling meats.

[SEC. 6. No person shall expose for sale in any farmers' and truckers' curb-stone market, now or hereafter existing within the limits of the City of Wilmington, any beef, or pork, or mutton, without having previously taken and sub-

scribed an oath or affirmation before the City Clerk of Wilmington that he is a farmer or trucker (as the case may be); that he will not expose for sale in any farmers' and truckers' curb-stone market now or hereafter existing within the limits of the City of Wilmington, any beef, or pork, or mutton, unless the same shall have been fed upon lands occupied by him, for a period of at least ninety days before slaughtering the same, nor any veal meat, except such be the product of his own cows upon lands occupied by him, nor more than six head of beef cattle in any twelve consecutive months. The said clerk shall thereupon issue to such farmer or trucker a certificate of the taking of such oath or affirmation.(a) The said oath or affirmation, and a record of the issuing of the certificate as aforesaid shall be entered in a book kept by the city clerk for that purpose. The said oath or affirmation and the certificate so given as aforesaid shall only avail the person so taking and receiving the same up to the thirtieth day of April next after the same has been so taken and received. Any person who shall expose for sale to any person in any such farmers' and truckers' curb-stone market, beef, or pork, or mutton, except as heretofore provided, shall be deemed to have violated this act, and the acts to which this is an amendment.]

Act of March 10, 1887, 18 D. L. 340.

Certificate to be issued.

Oath to be recorded.

(a) This section is set out verbatim, from the beginning to where the note is made (and commented upon) in the case of State vs. Wood, above mentioned. See Sec. 7 "a" following.

[SEC. 7. Any person who shall expose for sale in any farmers' and truckers' curb-stone market, now or hereafter existing within the limits of the City of Wilmington, any beef, or pork, or mutton, without having first made the oath or affirmation, and obtained the certificate, as provided for by Section 6 of the said act, shall be deemed guilty of a misdemeanor, and upon conviction thereof by the Court of General Sessions of the Peace and Jail Delivery for the County of New Castle, shall forfeit and pay a fine of not less than twenty dollars nor more than fifty dollars, one-half of said fine to be paid into the city treasury and one-half to the informer.](a) Any such farmer or trucker who having taken the oath or affirmation required in Section 6 of this act, shall sell

Violation.

Act of March 10, 1887, 18 D. L. 341.

Penalty.

in such farmers' and truckers' curb-stone market, slaughtered beef, or pork, or sheep, or lamb, or calf or veal meat, other in manner or quality than as in this act provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall forfeit and pay a fine of not less than fifty nor more than one hundred dollars, one-half thereof to go to the city treasury and one-half to the informer, and such farmer or trucker so offending shall be deemed to have committed perjury, and upon indictment therefor in the Court of General Sessions of the Peace and Jail Delivery, the record of his conviction for the unlawful selling of meats, as aforesaid, shall be conclusive evidence of his guilt under such indictment.

Penalty for violation of oath.

(*a*) This section is also set out to where the note is made in the case, below cited, and the Court said:

Paynter, J.: "The defendant in this case did not take such oath or . affirmation, and did not obtain such certificate. * * The defendant, therefore, in selling beef from his stand, shelf or table placed upon the sidewalk, or the space between the building line and the curbstone * * without having made the affidavit, and without having obtained the certificate * * acted in violation of" the law, &c.

State vs. Wood. (yr. 1888) unreported.

(The above case was that of a farmer selling meat on the sidewalk from an alley without complying with the above law.)

Hucksters' market.

SEC. 8. In addition to the farmers' and truckers' curb-stone markets hereinbefore provided for, the said Council shall have power to establish and regulate other curb-stone markets in the said city, viz: A curb-stone market for hucksters, to be occupied solely by persons residing in said city, who have taken out of the office of the Clerk of the Peace a retailer's license for selling goods, wares and merchandise, for the purpose of huckstering and none others; a curb-stone market to be used exclusively for the sale of products brought from the State of New Jersey by the producers of such products only; and a curb-stone market for the sale of fresh fish; such markets shall be kept separate and distinct from each other, and from the farmers' and truckers' curb-stone market. No other curb-stone markets, than provided for in this act, shall exist within the limits of the City of Wilmington.

New Jersey market.

Fish market.

Violation of act.

Arrest.

Hearing.

SEC. 9. Upon complaint made under oath to any justice of the peace, or to the City Judge of the City of Wilmington, that an offense has been committed against any of the provisions of this act, a warrant shall issue for the arrest of the person or persons so charged with committing the same. Upon the arrest of any person or persons so charged, the justice, or the City Judge, before whom he or they be brought, shall try the case as far as to determine whether such person or persons ought to be discharged or bound for his or their appearance at court, and if such justice, or City Judge, shall consider there is probable ground for the accusation, he shall bind such person or persons with sufficient surety for his or their appearance at the next Court of General Sessions of the Peace and Jail Delivery (*a*) for the County of New Castle, and if such person or persons do not give such surety, he shall commit him or them for trial.

SEC. 10. This shall be deemed and taken to be a part of the constitution of the said City of Wilmington.

Passed at Dover, April 15th, 1885.

(*a*) The Legislature can confer such criminal jurisdiction, if it desires, upon the Superior Court.
Morrow vs. State, 2 Marv. 4 at 34. (yr. 1895)

Chap. 665. Vol. 18. as amended by Chap. 220. Vol. 19.

A SUPPLEMENT to an Act to Revise and Consolidate the Statutes relating to Wilmington, passed at Dover, April 13, 1883, Amended.

Board directed to adopt rules for the construction of house drainage.

SECTION 1. The Board of Directors of the Street and Sewer Department of the City of Wilmington, to provide for the health of the citizens of said city shall have power, and it is hereby authorized and directed to adopt and promulgate suitable rules (*a*) and regulations for the construction of house drainage and cesspools, and to provide for the registration of plumbers and persons engaged in the plumbing business in said city, and for the enforcement of such rules and regulations; to make provision for the punishment of persons who shall refuse or neglect to comply with the same.

(*a*) See, as to the meaning of the word "rules," Sec. 76, "a," of the Charter, and the case of Morris et al vs. Pilot Coms., 7 Del. Ch. 136. (yr. 1894)

Inspection.

SEC. 2. The said Board of Directors of the Street and Sewer Department of said city, shall by rules and regulations also establish a system of inspection and supervision over all house drainage and cesspools and ventilation of the same, and appoint such inspector as may be necessary, at such compensation as may be approved by said Council, and make provision for payment of same. *Provided, nevertheless,* that the ordinances, rules and regulations of the Council now in force, shall remain operative and binding until the same are changed (*a*) in whole or in part by the said board of directors of the street and sewer department of said city.

Proviso.

Passed April 25th, 1889.

Amended May 15th, 1891.

(*a*) The ordinances, to be valid, must be changed in the manner prescribed by the Charter.

Mayor and Council of Wil. vs. McNabb. (yr. 1906) Munic. Ct. Decision final.

AN ACT to amend an Act entitled "An Act to Revise and Consolidate the Statutes relating to the City of Wilmington," being Chapter 207, Volume 17, Laws of Delaware, relative to the collection of certain taxes.

Permit for erection or repair of building to be withheld until all taxes are paid.

SECTION 1. That "The Mayor and Council of Wilmington" or such person or persons as they may by ordinance designate may refuse to grant any permit for the erection of any new building or the alteration, repair or destruction of any building until it be shown, to their satisfaction, that all taxes are fully paid upon the land on which said new building is proposed to be erected or upon the land and the building which is proposed to be altered, repaired, or destroyed.

Approved March 15, A. D. 1907.

CHAPTER II.

ACTS RELATING TO CITY OFFICERS.

	Page
1. Act Regulating the Election, Terms of Office, and Salaries of Certain City Officials	157
2. Act Authorizing the Fire Department to Elect Its Chief Engineer and Assistants	158
3. Act Authorizing the Appointment of Two Detectives	160
4. Act Authorizing the Appointment of an Inspector of Meats	162
5. Act Authorizing the House Sergeant to Issue Warrants	163
6. Act Authorizing the House Sergeant to Take Bail	164
7. An Act in Relation to Dressing of Sheep and Lambs	164
8. Act Requiring the Plumbing Inspector to Act as Gas Inspector	165

AN ACT relating to the Government of the City of Wilmington. 18 D. L. 339.

[SECTION 1. That at the third stated meeting of "The Council" in the month of July, A. D. 1893, and at the stated meeting biennially thereafter, "The Council" shall proceed to elect by ballot a City Clerk, who shall also be the Clerk of Council; a Bailiff of Council, who shall be charged with the care and custody of all that portion of the city hall property not used by the Municipal Court, the police commission or the police department of said city; an Inspector of Oils and Fluids used for illuminating purposes within the limits of the city; and a Clerk of the Market, who shall also be sealer of weights and measures used within the public markets and market houses of the City of Wilmington. The terms of the several officials herein designated, shall commence on the first day of August next ensuing their election, and shall be for the term of two years, (*a*) and the terms of office of the present incumbents are hereby extended until the first day of August, A. D. 1893. The salaries (*b*) of the several officials herein provided for shall be as follows: Clerk of Council,

Amended by Act of May 3, 1893. 19 D. L. 1019.

Clerk.

Bailiff.

Inspector of oils.

Clerk of the market.

Term of office.

Salaries.

[1][twelve] hundred dollars per annum; Bailiff of Council, seven hundred and twenty dollars per annum; Inspector of Oils and Fluids, the sum as is now fixed by law or ordinance for the present incumbent, and the Clerk of the Market, five hundred dollars per annum, together with all the fees and emoluments, to which by any law or ordinance he is entitled to receive as such clerk of the market. The salaries provided for by this act shall be payable in the same manner, and at the same time, as the salaries of other city officials are now payable.]

Repealed by 24 D. L. 347 * * * * * * * * * * * *

Passed at Dover, March 1st, 1887.

(*a*) As to whether appointive officers hold over until their successors are appointed, where there is a deadlock, or where, for any reason, no new appointments are made, the law seems to be as follows:

(1st) If the statute expressly limits the office to expire at the end of a fixed time, or upon a specified event, the incumbent does not hold over, but

(2nd) If the provision simply is, that the appointment or the election shall take place *annually*, for instance, without limiting the same to a fixed day, then the incumbent holds over.

Bates, Ch.: "The principle is, that if the term of an officer, civil or corporate, created by statute or charter, is not limited to expire at a fixed time, or upon a specified event, but there is simply a direction for the annual election of the officer, his original term continues, though after the year, until a successor is duly elected and qualified. * * A provision for holding an election on a *fixed day* was held to be *peremptory*; but one for electing annually, without a day fixed, was treated as *directory* only."

Sparks et al vs. Farmers' Bank, 3 Del. Ch. 274 at 296. (yr. 1869)

Mayor and Council of Wil. vs. Horn, 2 Har. 190. (yr. 1837) This case differs from the Sparks case as to the liability of a surety.

If an officer's appointment or election be legal, he is an officer de jure; if it be illegal, and he knows no better, or holds under "color" of right, he is an officer de facto, and his acts are valid. After he knows his appointment or election is illegal, his "color" of right, &c., is removed, and he then is simply an usurper, and his acts are illegal. For the definition of an officer de facto, see the case of Lee vs. Wil., 1 Marv. 65 at 71. (yr. 1893). See Sec. 108 "a" of the Charter. As to the above see 1 Beach on Pub. Corps., Sec. 182.

(*b*) As to the power of "The Council" to "fix" salaries, see Sec. 31, p. 60 at "Third" of the Charter.

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19 D. L. 422.

AN ACT to authorize the Fire Department of the City of Wilmington to elect its Chief Engineer and Assistants.

Election of Chief Engineer and Assistants.

SECTION 1. That the several fire companies of the City

1. For salary of Clerk of Council see Ordinance July 25, 1909, p. 568 this volume.

of Wilmington be and they are hereby directed to assemble at their respective engine houses on the second Tuesday in the month of May, A. D. 1892, and on the same day in every second year thereafter, between the hours of seven o'clock and ten o'clock P. M., and hold an election (*a*) for Chief Engineer, and First and Second Assistant Engineers of the Fire Department in the City of Wilmington aforesaid, to serve for the term of two years from the third Monday in May next ensuing their election or until their successors are elected.

Term of office.

Certificate of election.

(*a*) This provision states that the "fire companies" shall elect their Chief, and Assistant, Engineers, and prescribes how the election shall be held, and who may be elected; it is *all* left with the "fire companies." "The Council" passed an ordinance prescribing that the Chief and Assistant Engineers should be elected by rotation. It was claimed that the above was simply a "regulation," and that "The Council" possessed this power. It was admitted that "The Council" had the power to make proper regulations, but it was contended that the above ordinance was not a "regulation," but an attempt to repeal an Act of the Legislature by an ordinance. The Court held the ordinance to be void and decided the firemen could elect whom they pleased, and that "The Council" had nothing to do with it.

State Del. ex rel. Conway vs. Willis et al. (yr. 1902). App. Dock. p. 211.

The judges of the election shall deliver to the Clerk of the Council, on the day succeeding such election, a certificate of the votes cast by each company, setting forth the persons voted for and for what office and the number of votes cast for each person, which certificate shall be under oath and signed by said judges or a majority of them. The Council shall, at its next stated meeting after any such election, proceed to canvass (*b*) said certificates, and shall count each company as one vote, according to the majority appearing on the face of the certificate for the persons for whom such majority was cast, and the persons who shall receive a majority of the several companies shall be declared to be the Chief Engineer, and First and Second Assistant Engineers for the term next ensuing this election; should, however, there not be a majority of the companies cast for one or more of the persons for any of the said offices the present officers hold over until their successors are elected. Any vacancy occurring in any of the said offices by death, resignation, or

Canvass of votes.

Failure to elect.

Vacancies. How filled.

otherwise, shall be filled by the company from which said vacancy occurs for the residue of the term.

(*b*) "The Council" sits simply as a Board of Canvass. Its duty is ministerial. It is not a Court to judge the election returns. It must declare those persons elected in accordance with the returns of the fire companies, as presented by them to "The Council." If it should fail to so act, the Court, by mandamus, will compel it to discharge this simple, ministerial duty.

Same case as above cited in "a."

Who allowed to vote.

SEC. 2. No person shall be allowed to vote at any election provided for by this Act except he shall be a member in good standing of the fire company at whose house he shall offer to vote. Three judges, who shall be elected by ballot from among the members in good standing of fire company, shall be chosen at least one week prior to such election. Except where there are two candidates from one company each candidate shall have a judge of his own selection from the company to which he belongs.

Judges of election.

Inconsistent acts repealed

SEC. 3. That all acts and parts of acts inconsistent with this act shall be and are hereby repealed.

Passed at Dover, May 5, 1891.

AN ACT in Relation to State Detectives.

Governor to appoint two State Detectives.

SECTION 1. That on the third Monday in March in the year one thousand nine hundred and one, and every four years thereafter, the Governor shall appoint two suitable persons, one of whom shall reside in the City of Wilmington, to be detectives (*a*) for the State of Delaware. Such detectives shall hold office for the term of four years from the date of their appointment, and until their successors shall be appointed and duly qualified, unless sooner removed from office by the Governor as hereinafter provided. It shall be the duty of the said detectives, under the direction of the Attorney General or his Deputy, to investigate and ferret out crimes committed in this State.

Term of office.

(*a*) This Act repealed the Act of 21 D. L. Ch. 64. Under, and by virtue of the latter Act, one McVey, had been appointed State Detective. Three days after the office was abolished it was re-created, and other men appointed to the office. McVey sued for salary, claiming that by "abolishing" the office the Legislature was *diminishing* his salary (taking it

away altogether) within the meaning of Art. 15, Sec. 4 of the Constitution which reads: "No law shall extend the term of any public officer, or diminish his salary or emoluments after his election or appointment." The Court said:

Lore, C. J.: "It is well settled that offices created by the Legislature are entirely within legislative control; that the gift of such an office is not a contract. Unless there be some constitutional limitation, such offices may be modified, abridged or abolished, as the Legislature may see fit. When an office is abolished, the former incumbent has no right to compensation for the unexpired term. The salary is an incident of the office and dies with it, * * that part of Art. 15, Sec. 4, of the Constitution which prescribes, that no law shall "diminish his salary or emoluments after his election or appointment" has no application to this case. It only applies to cases where an office continues in existence, and during such continuance an attempt is made to diminish the salary or emoluments."

State ex rel. McVey vs. Burris, 4 Penn. 3 at 5. (yr. 1901)

Powers of.

SEC. 2. They shall have authority to make arrests and serve writs anywhere in the State.

Duties of.

SEC. 3. They or one of them shall serve all requisitions made by the Governor, and for this shall not receive any compensation except their actual expenses. Such expenses shall be paid by the State Treasurer upon the production of vouchers approved by the Attorney General and the Secretary of State.

Salary.

SEC. 4. They shall receive for their services a salary of twelve hundred dollars per annum each, payable in equal monthly installments by the Treasurer of the State of Delaware out of any funds in his hands not otherwise appropriated, upon the certificate of the Attorney General that they have faithfully performed the duties of their office during the preceding month.

Oath of office.

SEC. 5. Before entering upon the duties of their office they shall be duly sworn to faithfully discharge the duties of their office, according to the best of their ability.

Not to be held as officers within the scope of Section 13, Article 3 of the Constitution.

SEC. 6. Detectives appointed under the provisions of this Act shall not be held or considered to be officers within the scope and meaning of Section 13 of Article III, of the Constitution, but shall be held and considered to be special police officers for the Attorney General, and may be removed from office by the Governor at any time; Provided, however,

that no such detective shall be so removed except upon complaint filed in the office of the Secretary of State by the Attorney General, of which complaint such detective shall have at least ten days notice, and upon which complaint he shall be given by the Governor an opportunity to be heard, either in person or by counsel.

SEC. 7. All acts and parts of acts inconsistent with this act be and the same are hereby repealed.

Approved March 15, A. D. 1901.

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19 D. L. 1016. *AN ACT providing for an Inspector of Meats for the City of Wilmington.*

Inspector of meats.

SECTION 1. There shall be an officer of the City of Wilmington to be known and designated as Inspector of Meats, who shall have been at the time of his appointment or election, as hereinafter provided, a practical butcher by trade for at least ten years prior to his appointment or election, and shall be a citizen and qualified voter of this State, and a resident of the City of Wilmington.

Qualifications.

Duties.

SEC. 2. The duties of such Inspector of Meats shall be to inspect at any place within said city, all cattle, swine, sheep or other animals used for food, to prevent the slaughter for food of diseased animals, to prevent the sale or use for food of diseased, tainted or unwholesome meats, and to cause the same when found to be destroyed, to cause the arrest and trial of persons exposing or offering the same for sale, and to perform such other duties as are now, or shall hereafter be prescribed by any ordinance of said city, or by any rule (*a*) or regulation of the Board of Health (*b*) of said city. He shall not engage in any other business or trade while serving as such Inspector of Meats.

(*a*) As to the legal meaning of the word "rule," see the case of Morris et al vs. Pilot Coms., 7 Del. Ch. 136. (yr. 1894). See Sec. 76 "a" of the Charter.

The Board of Health can pass "rules and regulations," but not ordinances. See "b," below.

(*b*) The "other duties," mentioned in the above section, mean such as the Board of Health may create by "rule or regulation." The Board of Health cannot pass an ordinance or resolution, for all legislative powers are vested in "The Council." The Board of Health, for instance,

cannot pass an ordinance requiring butchers and persons selling meats, &c., to have the same covered with, or inclosed in, glass cases.

Mayor and Council of Wil. vs. Reed. (yr. 1910) Munic. Ct. (Decision final.) See Sec. 137, "a" of the Charter.

SEC. 3. * * * * * * * * At the first meeting of the Council of said city in the month of July, A. D. 1896, and biennially thereafter, the Council shall elect an Inspector of Meats, and in case of said office becoming vacant at any time from any cause whatever, the Council shall within ten days from the happening of such vacancy elect a person for the unexpired term. Term. Election.

SEC. 4. The salary of the Inspector of Meats shall be one thousand dollars per annum, payable monthly in the same manner as other officers of said city are paid. Salary.

SEC. 5. All acts and parts of acts inconsistent herewith are hereby repealed.

Passed at Dover, May 2, 1893.

AN ACT authorizing the House Sergeant on duty as such at the Police Station in the City of Wilmington to issue Warrants of Arrest in Certain Cases. 21 D. L. 246.

SECTION 1. That in the absence from his office, of the Clerk of the Municipal Court of the City of Wilmington, the House Sergeant on duty as such at the Police Station in the said City of Wilmington, is hereby authorized and empowered to issue under his hand and seal a warrant or warrants for the arrests of any person or persons charged, on oath or affirmation before him, to be guilty of any offence or crime within the jurisdiction of said Municipal Court (which oaths or affirmations the said House Sergeant is hereby authorized and empowered to administer.) Warrants issued as provided in this Section shall be in the same form, directed in the same manner, confer the same authority and immunity upon the officer or officers executing the same, returned in the manner and in all respects as lawful and effectual as if the said war- House sergeant to issue warrants and administer oaths. Form and manner of issue, &c.

rants had been issued by the Clerk (*a*) of the Municipal Court aforesaid.

Approved June 9, A. D. 1898.

(*a*) See Sec. 14, paragraph 5, of the Charter.

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21 D. L. 247. *AN ACT authorizing the House Sergeant on duty as such at the Police Station in the City of Wilmington to take bail in Certain Cases.*

House sergeant to take bail, &c.

SECTION 1. That in the absence, from his office, of the Clerk of the Municipal Court, of the City of Wilmington, the House Sergeant on duty as such at the Police Station in said City of Wilmington shall have power and authority to fix the amount of, approve, receive and take bail, in bailable cases, for the appearance of any person or persons, under arrest or detention, at the then next ensuing session of said Municipal Court, bail bonds taken as authorized by this act shall be as binding, effectual and subject to the same liability and proceedings as if the same had been taken by said Clerk of the Municipal Court.

(*a*) See Sec. 14, paragraph 5, of the Charter.

Filing of bond.

The said bail bonds shall at the session of said Municipal Court next ensuing the taking of the same as aforesaid, be filed with the clerk of said court.

Passed at Dover, May 27th, 1898.

Approved this the ninth day of June, A. D. 1898.

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24 D. L. 315. *AN ACT in Relation to the Dressing of Certain Animals.*

Unlawful to sell, &c., carcass of sheep and lambs unless dressed in certain manner.

SECTION 1. That from and after the approval of this Act, it shall be unlawful for any person or persons, firm, association or corporation to buy, sell, exchange, dress or deal in any carcass of sheep or lambs in the City of Wilmington with the heart, liver and lights, commonly called the "Pluck" in the body of any such animal or with the hoofs of either of said animals on them.

SEC. 2. That from and after the approval of this Act it shall be unlawful for any person or persons, firm, association

or corporation to ship or bring into the City of Wilmington for sale, or for any person or persons, firm, association or corporation to receive any carcass of sheep or lambs with the heart, liver and lights commonly called the "Pluck" in the body of either or both said animals, or with the hoofs of either or both said animals on them. Unlawful to ship into Wilmington carcass of sheep and lambs unless dressed in certain manner.

SEC. 3. Any person or persons, firm, association or corporation, who shall violate any of the provisions of this Act, shall upon conviction thereof, be punished by a fine for the first offence, of not less than five nor more than ten dollars; for the second offence, not less than ten nor more than twenty dollars; and for a third and all subsequent offences, not less than twenty-five nor more than one hundred dollars; and any convicted person or any officer, agent or employee of a corporation convicted of any such offence who shall refuse or neglect to pay such fine may be imprisoned for a term not less than ten days nor more than six months. Penalty for violation of act.

SEC 4. That all violations of this Act and offences against the same shall be misdemeanors, and the Municipal Court of the City of Wilmington shall have jurisdiction to hear, try and determine them or any of them upon information by the Attorney General, his deputy, or the prosecuting officer of the Municipal Court or any other person under oath. Jurisdiction of Municipal Court.

SEC. 5. That all acts or parts of acts inconsistent herewith, be and the same are hereby repealed.

Approved April 9, A. D. 1907.

AN ACT to provide for the appointment of a Gas Inspector for the City of Wilmington. 22 D. L. 831.

SECTION 1. From and after the first day of May A. D. 1903, the Inspector of Plumbing, of the City of Wilmington, shall assume the duties of Gas Inspector in and for the said city, and shall perform the duties hereinafter provided for. Inspector of Plumbing to be also Gas Inspector.

SEC. 2. Before entering upon the duties of his office, (a) the said Gas Inspector shall give bond to "The Mayor and Coun-

Bond.

cil of Wilmington," with good and satisfactory security, in the sum of one thousand dollars, conditioned for the faithful performance of his duties, such bond to be approved by the said Council of the City of Wilmington.

(*a*) As to the phrase "before entering upon the duties of his office," see Sec. 11, "a" of the Charter, and the case of
Pickering vs. Day, 2 Del. Ch. 333 at 334. (yr. 1866)

Salary.

SEC. 3. He shall receive as Gas Inspector, the sum of Five Hundred Dollars per year, payable monthly.

City Council may appoint assistant.

SEC. 4. Should the Gas Inspector at any time require the services of an assistant, he shall report the facts to the City Council, and the said Council may, if in their judgment they deem it necessary, appoint an assistant (*a*) for such time and at such salary as they may determine.

(*a*) As to The Council's powers as to appointment of officers, see Sec. 3, of the Charter.

Mayor and Council directed to promulgate suitable rules for government of office.

SEC. 5. The said Mayor and Council of Wilmington shall have power and are hereby authorized and directed to adopt and promulgate suitable rules (*a*) and regulations governing and regulating gas pipes and fittings in the City of Wilmington, in buildings that may hereafter be erected, and provide for the enforcement of such rules and regulations, and further make provision for the punishment of person or persons who shall refuse or neglect to comply with the same.

(*a*) As to the meaning of the word "rules," see Sec. 76, "a" of the Charter and the case of
Morris et al vs. Pilot Coms., 7 Del. Ch. 136. (yr. 1894)

May make additional rules for gas pipes, &c.

SEC. 6. The said Mayor and Council of Wilmington may also, by rules (*a*) and regulations, establish a system of inspection and supervision of gas pipes, fittings and fixtures, in buildings now erected.

(*a*) See Sec. 5, "a" above.

Gas Inspector to make daily tests of gas as to power.

SEC. 7. The Gas Inspector shall make a daily inspection and test of the gas as to candle power and report the result of said test to the Council monthly.

Inspection of meter upon application of consumer.

SEC. 8. Any consumer of gas can have his meter tested under the supervision of the Gas Inspector upon filing application for same. If meter proves correct in accordance with United States Standard, the applicant shall pay costs of said test, provided however the cost shall not exceed fifty cents. If the said meter should not conform to above standard the costs of said test shall be borne by the Gas Company.

Costs.

Fees to be paid to City Treasurer.

SEC. 9. All fees so collected shall be paid monthly into the treasury of the City of Wilmington.

SEC. 10. All acts or parts of acts inconsistent herewith are hereby superseded.

Approved April 16, A. D. 1903.

CHAPTER III.

ACTS RELATING TO PUBLIC PARKS.

	Page		Page
1. Act Creating the Board of Park Commissioners	168	2. Act to Authorize the Borrowing of Money for Purchase of Park Lands.....	173

17 D. L. 404.

AN ACT to provide for Public Parks for the use of the citizens of Wilmington and its vicinity.

Acquisition of lands for parks.

SECTION 1. That The Mayor and Council of Wilmington shall have power to take and acquire lands either by deed or devise, and to receive and accept all donations of money, by gift or legacy, for the purpose of providing and maintaining one or more open places or parks for the promotion of the health and recreation of the people of the City of Wilmington and its vicinity; and that lands within the corporate limits of the said city, or within [five] miles from the boundary thereof, may be purchased or acquired by, and conveyed or devised to, and the title and ownership of such lands be vested in the said Mayor and Council of Wilmington, for the purposes aforesaid.

Act of April 7, 1909. 25 D. L. 310.

Title.

Board of Park Commissioners.

SEC. 2. That William P. Bancroft, George H. Bates, Thomas F. Bayard, Edward Betts, Francis N. Buck, George W. Bush, William M. Canby, Joseph L. Carpenter, Jr., Henry A. DuPont, J. Taylor Gause, and their successors, who shall be appointed as hereinafter provided, together with the Mayor of the City of Wilmington, the President and the Chairman of the Finance Committee of the City Council, and the Chief Engineer of the Surveying Department of said city, for the time being, are hereby created and constituted a Board of Park Commissioners. The said Mayor, President, Chairman and Chief Engineer shall be *ex-officio* members of the said board. The said commissioners shall organize on or

Organization of the board.

before the first day of January, 1884, by the election of a president, who shall be a member, and a secretary and treasurer, who may or may not be members of the board, and shall immediately proceed to classify the first ten commissioners above named, as follows: Two of said commissioners shall be selected by lot to serve until the expiration of one year; two to serve until the expiration of two years; two to serve until the expiration of three years; two to serve until the expiration of four years; and two to serve until the expiration of five years, from the first day of January, A. D. 1884; and whenever a vacancy shall occur among any of the commissioners, who shall have been classified as herein directed, by expiration of term of service, or otherwise, the same shall be filled by the Associate Judge of the Superior Court of Delaware residing in New Castle County, who shall appoint a successor, and every such appointment shall be for the term of five years, unless when made to fill an unexpired term. No commissioner shall receive any compensation for his services as a member of the board. The treasurer shall, before he enters upon the duties of his office, (a) give bond to The Mayor and Council of Wilmington in such amount as shall be determined by the board of commissioners, with surety to be approved by the President and one other member of the said board, conditioned for the faithful performance of the duties of his office, and with warrant of attorney for the confession of judgment annexed thereto.

Election of officers.

Terms of commissioners.

Vacancies. How filled.

No compensation.

Treasurer's bond.

(a) As to the phrase "before he enters upon the duties of his office," see the case of Pickering vs. Day, 2 Del. Ch. 333 at 334. (yr. 1866) See Sec. 11, "a" of the Charter.

SEC. 3. That as soon as the said commissioners shall have fully organized, they shall have the care and management of all lands, the title to and ownership of which shall, after the passage of this act, become vested in "The Mayor and Council of Wilmington," to be laid out and used as a public park; and they shall have the power to adopt and execute all necessary and proper plans for the maintenance and improvement of, and to supervise the expenditure of all moneys which may be given or appropriated for laying out, improving or adorning the same. And the City Council of

Powers and duties of the commissioners.

Wilmington may confer upon the said board, and the board may accept the care and management, from time to time, of any other grounds now appropriated or hereafter to be appropriated for park purposes, for the use of the said city. But the said board shall not contract any debts, the total amount whereof shall be in excess of its annual income or receipts, or which shall not be paid out of the annual appropriation (*a*) made for its use by the City Council of Wilmington. All land and property which shall be held, laid out, and used, for maintaining any public park, or which shall be purchased or acquired for such use or purpose, shall be forever free from state, county and city taxation, so long as used for such purpose. No county road, street, railway, sewer, water or gas pipes, telegraph or telephone wires, shall be laid out, opened, extended over, under, above or through any park under the control and care of the said Board of Park Commissioners without their approval and consent.

Park property exempt from taxation.

(*a*) This section shows clearly that the yearly expenses shall be met out of the yearly income. The sinking fund provision is also applicable. "The Council" in 1873 had decided to buy land for park purposes, and to pay for the same as follows: a portion in cash, and the balance by giving notes covering a period of about 8 years. The following is taken from the case:

"The creation of debts and liabilities for the purchase of such lands, was in violation of the express provisions of the Charter of the city, and the supplements and amendments to the same, limiting the amount of the debt of said city which might be lawfully created, contracted or incurred by it."

Att'y General vs. Wil., 4 Del. Ch., 575 at 579. (yr. 1873)

The following is from the syllabus of the above case:

"Upon an information by the Attorney General on the relation of the citizens and taxpayers of the City of Wilmington, the city may be enjoined against purchase of lands for a park, and the incurring of debts or liabilities for the purchase money in excess of the amount of indebtedness which, under its Charter, it may lawfully contract." p. 575.

Appropriation.

SEC. 4. That the City Council of Wilmington shall, in the next estimate of the probable revenue and expenses of the city, made after the passage of this Act, and in every year thereafter, cause to be included in the said estimate, such sums as they may deem necessary and expedient for the improvement, management, and care of any park which may have been acquired by the said The Mayor and Council of Wilmington, to be used and laid out by the said commissioners under the authority of this Act, and every sum so es-

timated for the use of such park as aforesaid, shall be appropriated by the Council and paid over to the Board of Park Commissioners. How paid.

[SEC. 5. Whenever a majority of the members of said Board of Park Commissioners shall recommend to the Council the acquisition of any land for park purposes, the Council shall, by a vote of two-thirds of all the members thereof have power to purchase the same. If an amicable arrangement satisfactory to two-thirds of all the members of the Council can not be made for such purchase, then such land, which shall be adequately described, may, under a resolution passed by two-thirds of all the members of the Council, be taken by the Mayor and Council of Wilmington for said purpose in the same manner and subject to the same conditions and proceedings as are prescribed for condemning and taking land for the purpose of extending, widening, laying out or opening streets in the said city; provided that nothing contained in this Act shall authorize the condemnation of any water rights and provided further that no appropriation shall be made by the City Council for the purchase of land for park purposes outside of the present city limits, unless funds therefor shall have been provided by contribution, until after the sum of Twenty Thousand Dollars shall subsequent to this date have been expended in the purchase of lands for small parks within the present limits of the City of Wilmington. Any sum of money which may be agreed upon, or assessed, as the value of such land, or any portion of such money, the payment of which shall not have been otherwise provided for, shall be included in the next annual estimates and appropriations of the Council; and the city shall have power to borrow such sum by note or bond if necessary, in anticipation of the next annual appropriations, provided that the sum so to be borrowed in any one year shall not exceed Twenty Thousand Dollars.]

Act of April 7, 1909. 25 D. L. 310.

Shall have power to purchase.

Proviso.

Power to borrow.

(*a*) The wording of this section is not entirely clear. When a majority of the Park Commissioners shall recommend the purchase of "*any* land," The Council shall "have power to purchase the *same.*" * * provided the sum "to be *borrowed* in any one year shall not exceed $20,000. It does not say the debt *incurred* shall not exceed $20,000, but simply that the sum to be "*borrowed*" shall not exceed $20,000 in any

one year. Unless the word "borrowed" means "incurred" i. e. "debt incurred," it would permit the purchase of land without limit, and practically impair the sinking fund act, and the law limiting the debt of the city to 10% of the assessed valuation of real estate. This law should be amended. It, now, is a dangerous provision.

Jurisdiction.

SEC. 6. That for the better preservation of the public peace and order, the municipal jurisdiction of The Mayor and Council of Wilmington shall extend over and include any park which shall be laid out and opened under the authority of this Act, and also include and extend over the territory lying between such park and the boundaries of the City of Wilmington; and all laws, ordinances, rules and regulations of the said city shall apply to, and be enforced in and about said park and territory, as effectually as if the same were included within the limits of the said city; and the board of commissioners shall have power to appoint such special policemen as they deem necessary, who shall have the same power and authority as are exercised by the policemen of the City of Wilmington and the constables of New Castle County. The board of commissioners shall, from time to time, appoint such officers, agents and subordinates as they may deem necessary for the proper management and care of any park under their control, and prescribe their duties and the compensation to be paid to them.

Special policemen.

Regulations.

SEC. 7. The said board of commissioners shall have power to make all needful rules (*a*) and regulations for the government and use of any park under their control, not inconsistent with the laws and constitution of the United States, and the State of Delaware, or with the ordinances of the City of Wilmington; and any person who shall violate any of said rules and regulations shall be guilty of a misdemeanor, and shall pay such fine as may be prescribed by said board of commissioners, not to exceed ten dollars for each and every violation thereof, to be recovered before the Mayor[1] of the said city, or any justice of the peace in New Castle County, as debts of that amount are recoverable,

Violations.

Misdemeanor

Fine.

1. The jurisdiction of the Mayor relative to violations of municipal regulations is now vested in the Municipal Court for the City of Wilmington.

which fines shall be paid into the city treasury. No intoxicating liquors shall be sold in any public park, and no meeting of any kind assembled through advertisement, shall be permitted in any such park without the license or permission of the board of commissioners; nor shall any gathering or meeting for political purposes in any such park be permitted at any time. No intoxicating liquors or meetings in parks.

(*a*) As to the legal meaning of the word "rules," see Sec. 76, "a" of the Charter, and the case of Morris et al vs. Pilot Coms., 7 Del. Ch. 136. (yr. 1894)

SEC. 8. The President of the said Board of Park Commissioners shall make an annual report in writing to the City Council of the operations of the said board, together with a statement of its receipts and expenditures for and during the preceding year. They may make all needful by-laws for the government of the said board. If any member of said board, after having accepted an appointment thereto, shall refuse or neglect to serve as a commissioner, he may be removed and his place declared vacant by a vote of two-thirds of all the members of the said board. Annual reports. By-laws. Removals.

Passed at Dover, March 13, 1883.

A SUPPLEMENT to an act entitled "An act to provide for Public Parks for the use of the citizens of Wilmington and its vicinity," passed March 13, 1883. 17 D L. 889.

SECTION 1. That in addition to the powers conferred by the act to which this is a supplement, The Mayor and Council of Wilmington, upon the recommendation of two-thirds of the Board of Park Commissioners, are hereby authorized to borrow upon bonds such sum or sums and upon such terms as the City Council may from time to time deem expedient, not to exceed in the aggregate the sum of one hundred and fifty thousand dollars, to be used in the purchase or acquisition, in the manner authorized by the act to which this is a supplement, of land for a park or parks for the benefit of the citizens of Wilmington and its vicinity. Power to borrow money to purchase land. Amount.

Passed at Dover, April 10, 1885.

CHAPTER IV.

ACTS RELATING TO THE WATER DEPARTMENT.

	Page		Page
1. Act Creating the Board of Water Commissioners	174	2. Act Giving Authority to Construct a Public Bath House	183

17 D. L. 408. *AN ACT to establish a Board of Water Commissioners for the City of Wilmington, and for other purposes.*

Rights and powers of the Water Commissioners.

SECTION 1. The City of Wilmington is hereby authorized, through the agency of a Board of Water Commissioners, (*a*) hereby created, constituted and appointed, and their successors in office, to take, convey into and throughout said city, the water of the Brandywine river, from any point on said river, or other wholesome water, and may also acquire and hold lands, real estate or personal property, necessary for constructing aqueducts, laying pipes, constructing reservoirs, erecting buildings and machinery proper for the said works, and for purifying, conducting, storing and distributing such water, and to purchase, (*b*) take and hold lands and water-rights for supplying the citizens with good and wholesome water. (*c*)

(*a*) For a full history of the creation of this Department, and its powers, and the control of the Legislature over the same, see the case of Coyle vs. McIntire, 7 Houst. 44. (yr. 1884)

Sec. 1 of this Act is set out verbatim in the case below cited on pages 477 and 490, and commenting upon it, it was said by

Spruance, J.: "Here we have conferred upon said city, by the agency of said board, the fullest power to acquire, hold and use real and personal property for the supply of water to the citizens of said city," &c.

Weldin vs. Wil., 3 Penn. 472 at 490. (yr. 1902)

Continuing, the same Judge said:

"Prior to the passage of said act, the waterworks of the city had been under the control of the City Council, and said act transferred said control to the said Board. * * Since said * act took effect, the City Council has had no power whatever as to the water supply of the city, and the powers of the corporation in this respect, whatever they may be, can

be exercised only through the agency of said Board, and said Board has no powers except those conferred upon it by said act.''

Weldin vs. Wil., 3 Penn. 472 at 489. (yr. 1902)
Coyle vs. McIntire, 7 Houst. 44 at 100-101. (yr. 1884)
Bullock's Admr. vs. W. C. Ry. 5 Penn. 209 at 217. (yr. 1905)

(*b*) The Board may ''purchase real estate to be used for the construction of a new reservoir for said city and to pay for the same from the income, receipts and rents of the water works in the hands of said Board,'' of Water Commissioners.

Weldin vs. Wil., 3 Penn. 472. (yr. 1902)

(*c*) In reference to erecting pumps, and later to purchasing the same ''for supplying the citizens with good and wholesome water,'' see the case of

Coyle vs. McIntire, 7 Houst. 44 at 77. (yr. 1884) (Brief of one of the attorneys.)

Commissioners appointed.

SEC. 2. That William T. Porter, Caesar A. Rodney and Lewis Paynter, of the City of Wilmington and State of Delaware, are hereby constituted a Board of Water Commissioners for the said city under this Act, with full powers to act as such for the term of two, four and six years, as herein specified, respectively, or until their successors shall be duly appointed. (*a*) At the first meeting after the passage of this Act, said commissioners shall determine their terms by lot, and shall certify the result in duplicate to the City Council, and to the Recorder of Deeds for New Castle County. The said certificate shall be recorded by the said Recorder of Deeds, and the original, or the record thereof, or a duly certified copy of the record, shall be evidence in all the courts of this State, as elsewhere. The commissioner who draws the two years' term, shall serve to, and until the first day of July, A. D. 1885; the commissioner who draws the four years' term, shall serve until the first day of July, A. D. 1887; and the commissioner who draws the six years' term, shall serve until the first day of July, A. D. 1889. At the expiration of the term of the said commissioner, who shall draw the shortest term, and biennially thereafter, the place of the retiring commissioner shall be filled by appointment by the Mayor of the City of Wilmington for a term of six years.

Terms of office.

Certificate.

Mayor to appoint succeeding commissioners.

(*a*) *Saulsbury, Ch.*: ''In the case of the water works of the City of Wilmington, these works were not taken away

from the city by the appointment of a Board of Commissioners to manage them; nor was their use diverted from its original purpose.''

Coyle vs. McIntire, 7 Houst. 44 at 97. (yr. 1884)

The Chancellor also said:

''All the agencies of the city * * can be abolished or changed at the will of the Legislature, and * their functions terminated and assigned to other and different agencies.'' (98)

'' * although the water works * * may have been prior to the passage of this act * * under the control * * of the City Council * * it was competent for the Legislature to alter and change that control, management and agency as it might deem proper.'' id 100-101.

Qualifications for member of board.

No person shall be eligible to appointment as a member of said board who shall not be a citizen of the United States, a qualified voter of this State, and a resident of the City of Wilmington for the last five years next preceding his appointment.

Removal.

Any member of said board may be removed for cause, by the Mayor of said city, with the concurrence of two-thirds of the whole City Council. The reasons for the removal shall be entered in the journal.

Vacancies.

No person shall hold any other municipal office during his membership in said board. The said board shall have power to fill any vacancies in its own membership for the unexpired term, but all the members of said board shall not at any one time belong to the same political party.

Oath.

Each member of said board shall, before entering upon his duties, (*a*) in addition to any oath required to be taken by other municipal officers, take and subscribe, and file in the office of the Mayor of the said city, an oath or affirmation that he will faithfully perform his duties as a water commissioner of said city, and that he will neither be concerned or interested pecuniarily in any contract for work or materials for or about the erection, construction, or repairs of said water works while a member of said board; and further, that he will not be controlled in any vote or action, as a member of said board, by political or partisan consideration.

(*a*) As to the phrase ''before entering upon his duties,'' see Sec. 11 ''a'' of the Charter.

Organization of board.

SEC. 3. Within ten days after the passage of this Act, the said Board of Water Commissioners hereby constituted, shall asssemble and organize by selecting one of their number to preside over its deliberations.

The Registrar or Chief Clerk of the water department, for the time being, shall be secretary of said board.

Salaries of Commissioners.

SEC. 4. (a) The Board of Water Commissioners shall be paid for their services, from the passage of this Act, yearly salaries, as follows, viz: To each, the annual sum of three hundred dollars ($300.) payable quarterly. The said city may, by the agency aforesaid, construct any aqueduct over or under any water course, street, road, or railroad, in such manner as not necessarily to obstruct travel thereon, and may enter upon and dig up (b) any such street, road or railroad, for the purpose of laying down pipes beneath the surface, and for repairing the same, and, in general, do all things necessary and proper for carrying this Act into effect. The said Board of Water Commissioners shall have control of all matters relating to the water supply in the City of Wilmington, of the management and direction of the water works now existing, or hereafter to be constructed in connection therewith; shall have charge and supervision of all the mains, stop-cocks and fire hydrants and other fixtures appertaining to the distribution of water through the city, and of the collection of all revenue due, or to become due, to the City of Wilmington for water, or accruing to the said city on account of the water works thereof in virtue of any ordinances now existing, or of any rules and regulations hereafter to be passed by said board.

Construction of aqueducts.

Control of water supply.

Revenue.

(a) This section, beginning with the phrase "The said Board," &c., in the 11th line thereof, is set out in full and discussed in the case below mentioned. The Court in speaking of it (and other sections) said:

Grubb, J.: "These plain and positive provisions" * (Secs. 1-4 and 7) "disclose a general legislative intent and purpose, to secure for the City of Wilmington from time to time, in the present and future, as its growing area and population and needs require, a sure and ample daily supply of good and wholesome water."

Weldin vs. Wil., 3 Penn. 472 at 478. (yr. 1902)

(b) The city must use the same degree of care and diligence in tearing up and replacing a street (laying a water drain in the street) as a good business man would do under like circumstances.

Kent vs. Wil., 7 Houst. 397 at 399. (yr. 1886)

Schelich vs. Wilmington, 1 Boyce 57 at 59-60. (yr. 1909)

Ordinances, how changed.

SEC. 5. The ordinances of said city now in force relating thereto, shall continue in force until the same are changed (a)

in whole or in part, by the said board of commissioners, and all officers of the water department of said city shall be, from the time of the organization of said board of commissioners,

Control of officers.

under and subject to the control of said board, and the terms of office of all of said officers are hereby made subject to the termination (*b*) at the pleasure of said board, and all such officers shall continue to perform the duties now devolved upon them by the ordinances of said city, until the board shall

Books of department.

otherwise direct; and all books, accounts, and property connected with the water department of said city, or any office therein, shall be used and disposed of according to the directions of said board.

(*a*) The ordinances should be changed in the manner prescribed by law.

Mayor and Council of Wil. vs. McNabb. (yr. 1906) Munic. Ct. (Decision final.)

(*b*) See Sec. 6, "a."

Duties of board.

The said board shall keep, or cause to be kept, a full and true account, in suitable books, of all permits issued for the use of water, and all moneys received on account of use of water, according to the provisions of any ordinance now in force, or of any rules (*a*) or regulations, hereafter to be passed by said board, and for all labor performed or materials or supplies furnished.

(*a*) As to the legal meaning of "rules," see Sec. 76, "a" of the Charter.

Appointment and discharge of officers.

SEC. 6. The said Board of Water Commissioners, shall, in its discretion, appoint, employ and discharge (*a*) all officers, agents, ministers and servants necessary for the management and service of the water works, and for the collection of the revenue arising therefrom, as herein provided, and shall determine the compensation to be paid to each one so

Further powers.

employed; and said board shall make all needful rules and regulations to govern its own deliberations, and for the observance of the officers, agents, ministers and servants by it employed, and shall determine the penalty and condition of the bond to be given by each of such officers, agents, ministers and servants.

(*a*) Prior to the creation of the Water Department, "The Council" had charge of the water works, and had appointed Coyle Chief Engineer.

The Board of Water Commissioners discharged Coyle and appointed McIntire in his place. Coyle brought quo warranto proceedings to oust McIntire from the office. The Court went into the matter exhaustively, declared the Act to be constitutional, and that the Board had the right to appoint McIntire Chief Engineer.

Coyle vs. McIntire, 7 Houst. 44 et seq. (yr. 1884)

SEC. 10. The said board shall with all dispatch prepare and resolve on a plan for the permanent water works best suited to the circumstances of the City of Wilmington, capable of affording an ample daily supply for the inhabitants of the city, and may acquire for the City of Wilmington, by contract or otherwise, as hereinafter provided, all such real estate as may be needed for the construction of such extended water works, the title of any real estate so purchased to be vested in The Mayor and Council of Wilmington. Acquisition of land. Title.

(*a*) Section 7 is set out in full, and considered in the case below mentioned. The Court said:

Grubb, J.: " * Section 7 does not itself primarily confer the power to *acquire* real estate. It merely recognizes and reiterates such power which already had been granted in Sec. 1. The special purpose of Sec. 7 was to make it the mandatory duty of the Board to supply the defaults of the Council's former administration of the Water Department by providing a permanent and adequate system of water works for the city."

Weldin vs. Wil., 3 Penn. 472 at 481. (yr. 1902)

SEC. 8. The doing of all work and the furnishing of all materials (*a*) and supplies for the water works shall be let out by the Board of Water Commissioners (*b*) to the lowest and best bidder, except in cases where it is not practicable to do such work or furnish such materials and supplies by contract. Notice that the board will receive proposals for such work, materials or supplies shall in all cases be published at least five times, the last publication to be at least three days before the opening of the bids, in two papers of the City of Wilmington. Such notice shall state the kind and the amount of the work to be done or furnished, the place where, and the period within which, the bids will be received. Each bid must be signed by the bidder, and be accompanied by an undertaking signed by the persons ["or a thoroughly responsible surety company, which company or companies must be acceptable to the Board of Water Commissioners"] offered by the bidder as his sureties, who must, in all cases, be resident free-holders of the City of Wilmington, declaring Contracts. Proposals. Bids. Act of March 31, 1903, 22 D. L. 839. Surety Company may enter bond upon approval of Board of Water Commissioners.

Bond.

their consent to be such sureties in the event of the contract being awarded to such bidder; and if any contract be so awarded, and such bidder shall fail to complete the execution of a contract therefor, with security for its performance approved by the said board, such bidder, and the party or parties so undertaking for him, as aforesaid, and abe liable to pay to the City of Wilmington any damage devt may be occasioned to said city by such failure.

Penalty for violation of contract.

(*a*) If materials be furnished to a contractor, who has been employed by the city in building water works, and he does not pay for the same, a mechanic's lien cannot be entered up against the building, for it is not the ascertainment of the amount of the liability on the part of the municipal corporation for its own debt, and it is a general principle of law, that the property of a municipal corporation cannot be sold under execution process. The remedy is to mandamus the city to raise the amount of indebtedness by taxation.

Emory & Co. vs. Coms. Laurel, 3 Penn. 67 at 69. (yr. 1900)
Quinby & Co. vs. Wil., 5 Houst. 26 at 31. (yr. 1875)
See Sec. 2, "c" of the Charter.

(*b*) It expressly says in the above section that the Board of Water Commissioners shall make the contracts for the city. The Mayor has nothing to do with the matter. His duty is purely ministerial, viz: to sign his name as Mayor, and affix the corporate seal, to all contracts thus made. If he refuse, the Court, upon mandamus proceedings, will order him to do so.

U. S. Sand Filtration vs. Bird. (yr. 1904) App. Dock. p. 225.
McCormick vs. Fisher, 5 Penn. 273 at 276. (yr. 1903)
See Sec. 7, "a" of the Charter.

Duties of City Auditor.

SEC. 9. The City Auditor shall examine all bills against said board, and indorse them as correct before they are presented to said board for payment. (*a*) He shall also examine and countersign all drafts or orders, and withhold his signature in case the draft or order is made without sanction of law, or with any circumstances of fraud actually or presumably attached thereto, in all of which cases he shall report his action and the grounds therefor to the Board of Water Commissioners at its ensuing meeting. The board shall, thereupon duly, carefully, and publicly consider the case, and shall sustain or overrule his action by a unanimous vote of all the members of said board, whereupon it shall be the duty of the City Auditor, in case he shall be overruled, to countersign the said draft or order, in which case he shall be exonerated from all responsibility in the premises. He shall also keep a book or books in which an exact and com-

Auditor's books.

plete record of all accounts so paid shall be entered, keeping a debtor and credit account with all persons doing work for, or furnishing goods to, the said board in any manner.

(*a*) See Section 39 of the Charter.

SEC. 10. * * * * * * * * * * Repealed. Act of April 9, 1885. 17 D. L. 888.
* * * * * * * * * * *

SEC. 11. If any member of said Board of Water Commissioners, or any officer of said board, shall at any time apply to his own use any of the money which may come to his hands, or under his control, by virtue of this Act, or which being a part of the revenue for the use of the water furnished by said works, or the proceeds of the sale of the bonds by this Act authorized, shall in any way come to his hands or under the control of any such member or officer, the person so offending, and his sureties, shall forfeit and pay to the City of Wilmington a sum of money which shall be two-fold greater than the sum of money so applied to the use of the offender, to be recovered by action on his official bond, or otherwise as the case may be. Malfeasance of members or officers of the board. Forfeit.

SEC. 12. (*a*) For the purpose of defraying all the cost of acquiring real estate for reservoirs, laying pipe, purchasing and establishing engines, constructing (*b*) all (*c*) the works contemplated by this Act, and purchasing water rights, the City of Wilmington, on the requisition of said Board of Water Commissioners, shall issue bonds, (*d*) each for the sum of one hundred dollars, or multiples of one hundred, payable in not more than thirty-five years from date of issue, to be denominated "Wilmington City Bonds" to an amount, not exceeding one hundred and twenty thousand dollars, bearing interest not exceeding five and one-half per cent. per annum, and the Board of Water Commissioners may sell and dispose of the same on the most advantageous terms possible, but no commission or other compensation shall be charged or paid to any member of said board for effecting the sale or negotiation of said bonds. All the aforesaid bonds shall be signed by the Mayor, and countersigned by the Treasurer and City Auditor, in the same manner as other city bonds, and the Power to issue bonds. Amount.

record thereof shall be made and kept by the City Auditor and Treasurer respectively. The said sum of one hundred and twenty thousand dollars, shall be in addition to, and exclusive of the sum of sixty thousand dollars, authorized to be borrowed for the purchase of water rights for said city at the present session of the General Assembly, and in case the said board of commissioners shall, under the provisions of this Act, take control of said water department before the issue of said bonds to the amount of sixty thousand dollars, it shall be the duty of the City Council to complete the issue and sale of said bonds, and to use the proceeds of the same for the purchase of the water-rights contracted for by said Council, and the board of commissioners shall have no authority to interfere with the same.

(*a*) This section is partly set out and discussed in the case below cited.

Grubb, J.: "Section 12 was enacted in contemplation of, and in accord with, the following provision of Sec. 71 of the Wilmington City Charter of 1883. * * Hence the purpose of Sec. 12 was to relieve the Board as the agent of the city from this limitation of said Charter provision, and permit it to borrow money, if it deemed it proper to do so, upon the city's credit to an amount not exceeding $120,000," &c.

Weldin vs. Wil., 3 Penn. 472 at 483. (yr. 1902)

It was "designed to be a temporary, and not a permanent provision." id 484.

(*b*) For the broad meaning of the word "construct," in this section, see above case, p. 486.

(*c*) For a construction of the word "all" in this section, see above case, p. 480.

(*d*) *Grubb, J.*: "The bonds authorized or referred to by Section 12 of said act, amounting to $180,000, were issued and the proceeds thereof expended as provided in said act, and no portion thereof is now, or since about 1889, has been, in the possession of said board." id. 473.

The above case decided that the Water Department could purchase real estate for a new reservoir and pay for the same from the income, rents and receipts of the water works in the hands of the Department. id. 472.

Deposit of money.

SEC. 13. The proceeds of the sale of said bonds, and also the revenue derived from the water works, shall be received by said Board of Water Commissioners and placed on deposit in such bank at Wilmington, as shall, from time to time, be the depository of the funds of the city, to the credit of the said board; and all moneys to be disbursed thereon on

account of said water works, shall be drawn upon warrants signed by the President of said board, and countersigned by the City Treasurer and City Auditor. Warrants.

SEC. 14. The water rates shall be fixed by the said Board of Water Commissioners, at prices that shall produce revenue sufficient, at least, to pay the interest on the water bonds and the running expenses of the water works. *Provided*, that in no case shall a dwelling house, having one hydrant in the yard or kitchen, or both, be charged more than five dollars. Water rates. Proviso.

[All rents, income, receipts, revenues and moneys from all sources, now received, or hereafter to be received, by the said Board of Water Commissioners, (excepting the annual appropriations made by The Council to said Board), shall be paid monthly on the first day of each and every month to the City Treasurer for the use of the City, to be expended for municipal purposes in such manner as the Council may deem proper.] Act of March 25, 1907. 24 D. L. 348.

SEC. 15. This act shall take effect from its passage, and all acts inconsistent herewith are hereby repealed.

Passed at Dover, April 18, 1883.

AN ACT to amend an act entitled "An act to establish a Board of Water Commissioners for the City of Wilmington, and for other purposes." 20 D. L. 156.

SECTION 1. The Board of Water Commissioners for the City of Wilmington are hereby authorized and empowered, at such time as they shall deem proper, to construct, erect and maintain a public bath house at or near the city water works on the Brandywine river, the cost of such bath house and expense of maintenance to be included in and paid as one of the operating expenses of the water works for the year in which such cost or expense is incurred. Public bath house may be constructed near water works. Expenses, how borne.

SEC. 2. That for the better protection of the water of the Brandywine river and its tributaries, the Board of Water

Two patrol officers may be appointed to prevent the pollution of the waters of the Brandywine.

Jurisdiction.

Commissioners for the City of Wilmington are hereby given power and authority to appoint two patrol officers who shall be vested with police powers and who shall be under the control and subject to the rules and regulations of the Board of Water Commissioners. Their jurisdiction shall extend to the State line within which they shall have authority to make arrests for any violation of the State laws in regard to the pollution (*a*) of streams.

Passed at Dover, March 28, 1895.

(*a*) In regard to the pollution of streams, see Act of Feb. 4, 1864, 12 D. L. Ch. 405; Rev. Code p. 926.

The City of Wilmington, as a riparian proprietor (independent of the above acts) is entitled to pure water.

The Chancellor: It "has a legal right to the flow of water * * in its accustomed channel and in its usual volume. It has a legal right to the flow of said stream in its *accustomed purity*, unpolluted by riparian owners above."

Jessup & Moore Paper Co. vs. Ford, 6 Del. Ch. 52 at 70. (yr. 1887);

Farman vs. Ford, 6 Del. Ch. 47. (yr. 1886)

Harlan & Hollingsworth Co. vs. Paschall, 5 Del. Ch. 435 at 453. (yr. 1882)

CHAPTER V.

ACT RELATING TO THE HARBOR OF WILMINGTON. (a)

	Page
1. Act Creating the Harbor Commissioners and Board of Port Wardens	185
2. Act to Establish Bulkhead Wharf and Pier Lines on the Delaware River	201
3. Act Authorizing the Mayor and Council to Make Appropriation for the Improvement of the Christiana River	204

Act of April 18, 1883, as amended March 27, 1885. Published as amended. 17 D. L. 873.

AN ACT for the protection of the Harbor of Wilmington, and the improvement of the navigation of the waters thereof.

Harbor Commissioners created.

SECTION 1. That Wm. T. Porter, Franklin B. Colton, George W. Bush, Geo. A. LeMaistre, and Washington Jones, be and they are hereby constituted and appointed commissioners to do and perform the matters and things hereinafter prescribed, that is to say: The said commissioners shall, within two years after the passage of this Act, view (b) the Christiana river from where the bridge of the Philadelphia, Wilmington and Baltimore Railroad Company crosses the same to the mouth thereof, and the Brandywine river from where the bridge known as the Market street bridge crosses the same to the mouth thereof, and that part of the river Delaware upon which the City of Wilmington fronts, and the shores and margins of said rivers within the limits aforesaid, and fix, alter, re-adjust, establish and determine lines beyond which no wharf, pier, bulkhead or other structure or obstruction, shall be erected, placed, or maintained in the tideway of said rivers within the limits aforesaid. (c)

Duties.

(a) For an interesting account of the powers, &c., of the Board of Harbor Commissioners in regard to fixing wharf lines, and when the Court of Chancery will interfere on the ground that an obstruction has been erected in a navigable river, and as to the rights of riparian proprietors, &c., see the case of

Harlan & Hollingsworth Co. vs. Paschall, 5 Del. Ch. 435. (yr. 1882)

In the above case the Court would not enjoin the building of a

wharf in the Christiana Creek, though far out into the stream, beyond the wharf line, as it did not interfere with navigation to the extent of becoming a public nuisance. id. 436.

(See Sec. 9, "a" below)

(*b*) *Saulsbury, Ch.*: In the year 1885 "Five commissioners were appointed * * to view the River Christiana where the same fronts the City of Wilmington, and thereupon to adjust and determine a certain limit on each side of the River Christiana to which wharves may be hereafter extended out into the said River," &c. id. at 449.

(*c*) See the act entitled "An Act to establish, bulkhead, wharf and pier lines on the Delaware River, in front of the City of Wilmington and vicinity." 22 D. L. p. 5, Act of March 8, 1901, p. 201 this volume.

Commissioners' powers.

SEC. 2. In the performance of the duties aforesaid the said commissioners may, so far as they shall deem it practicable and expedient, ratify and adopt the lines established within the limits aforesaid pursuant to the act passed April 9th, 1869, entitled "A further supplement to the act entitled 'An act to regulate the building of wharves in the City of Wilmington,' passed at Dover, February 6th, 1855," but they shall have full power and authority to alter and change the same, or any part thereof; but all lines so ratified and adopted, and all so altered and changed, as well as all new lines fixed and established by the said commissioners, shall be described and plotted in the return of their proceedings hereinafter mentioned.

May establish land marks.

SEC. 3. The said commissioners for the purpose of ascertaining and establishing said lines, shall have power and authority to enter upon any lands adjacent to said rivers and there fix and establish such landmarks as they may deem necessary for the purpose aforesaid. And said commissioners, in the performance of their duties under this Act, shall have authority to take to their assistance and employ such competent and skillful engineer or surveyor and other persons as they may deem necessary. The said commissioners, and the

Surveyor.

engineer or surveyor employed by them, before proceeding to the performance of their duties under this Act, shall be severally sworn or affirmed to perform the same faithfully and impartially to the best of their skill and judgment. Such oath

Oath, by whom administered.

or affirmation may be administered by the Mayor of the City of Wilmington, or by any justice of the peace residing therein.

and certificates thereof shall be annexed to the return of said commissioners and be recorded therewith.

Return duplicate.

SEC. 4. The said commissioners, as soon as conveniently may be after adjusting, determining, and establishing such lines as aforesaid, shall make return of their proceedings in the premises, in duplicate, under their hands, or the hands of a majority of them, to the Council of Wilmington, together with duplicate plots, showing distinctly the said lines, with such courses, distances and landmarks as they may have adopted for ascertaining the same. And the said Council shall thereupon cause one of said returns and plots (*a*) to be filed and preserved in the office of the Chief Engineer of said city, and the other of said returns and plots to be filed, preserved and recorded in the office of the Recorder of Deeds in and for New Castle County, and the said duplicate returns and plots respectively, and the record thereof, as well as duly certified copies of the same, or of the record thereof, shall be competent evidence for all purposes.

Duplicate plots.

Where filed and recorded.

Evidence.

(*a*) *Saulsbury, Ch.*: "The Commissioners were required to make a return of their proceedings in the premises, with a plot of the said River Christiana, showing distinctly the said limits, with such distances and landmarks as might be adopted for ascertaining the same. The return and plot were required to be filed and preserved in the office of the City Council."

Harlan & Hollingsworth Co. vs. Paschall, 5 Del. Ch. 435 at 449. (yr. 1882)

Vacancies, how filled.

SEC. 5. The acts of a majority of said commissioners shall be valid as the act of all of them; and any vacancy occurring in said commission, by death, resignation, or otherwise, shall be filled by the remaining commissioners. The Council of Wilmington shall fix the compensation of said commissioners, and provide for the payment of the same. The compensation of the engineer, surveyor, and other persons employed by said commissioners in the execution of their duties under this Act, shall be fixed by said commissioners, and provision for the payment of the same, as well as for the other necessary expenses of said commission, shall be made by the Council of Wilmington, from time to time, upon certificates by said commissioners.

Compensation, how paid.

Act of 20 D. L. 667.

Building line for wharves, &c.

Wharves, &c., heretofore erected not affected.

Proviso.

Building line may be changed.

Limit.

Change to be recorded.

May re-establish land marks.

SEC. 6. ["From and after the making of said return by the said commissioners to the said council as aforesaid, no person shall erect, place or maintain in the tideway of said rivers or either of them, within the limits aforesaid, any wharf, pier, bulkhead or other structure or obstruction beyond the lines established and determined by said commissioners in and by their return as aforesaid. (a) *Provided, however,* that the establishment and determination of any such line or lines by said commissioners as aforesaid, shall not render unlawful the maintenance of any wharf, pier, bulkhead or other structure which before that time had been erected or placed in the tideway of either of said rivers beyond such line or lines. *And provided further,* that nothing contained in this section shall be construed to render unlawful or to prevent the erection and maintenance of suitable abutments, piers, piling and spans for bridges (b) that are or may be authorized by the laws of this State or of the United States, or the erection and maintenance of suitable fenders and bulkheads, for the protection of drawbridges from ice and freshets, such protecting fenders and bulkheads not to extend into the waterway within the lines of the open span or draw or obstruct navigation or interfere with the free passage of vessels through the same; and whenever such protecting fenders or bulkheads shall be deemed necessary for the safety of any drawbridge by the Levy Court of New Castle county having charge of the construction and maintenance of such bridges they may be so erected and constructed. (c) *And provided further,* that the board of port wardens shall have power in their discretion to, from time to time, alter, readjust and establish the exterior lines of wharves, piers and bulkheads in any of said rivers within the limits named, not extending, however, said exterior line beyond the line of mean low water; and in every such case such alteration or readjustment shall be drawn and recorded on the returns or plots mentioned in Section 4 of this act, and they shall have power also to restore and replace where necessary the landmarks establishing said line whenever said landmarks shall be found to have been destroyed or removed."]

(a) As to the Delaware River, see Sec. 4 of the Act named in Sec. 1, "c" of the above Act.

(b) As to the general common law right, as a riparian proprietor, to

build a bridge, &c., to low water mark in front of his land abutting on a river, see case of State vs. Reybold, Jr., 5 Har. 484 at 486. (yr. 1854)

(*c*) This power granted by the Legislature to the Levy Court, is practically without limit. The Legislature can do as it pleases with its streams.

Harrington, Justice: "* all navigable rivers within the State belong to the State, not merely in right of eminent domain, but in actual propriety. (135) * * The State has the unrestricted right of a proprietor over its waters, and may obstruct or close the same if the public interest or convenience requires it to do so. As a public highway it is free to all citizens for navigation or fishery; but when the Legislature deems it more beneficial to the public to close this highway by a permanent bridge, or to exclude the fish from its waters by a dam, it is a question only of public expediency, and furnishes no just ground of complaint from individuals who have heretofore enjoyed benefits and advantages, which may be abridged, or cut off, by the improvement."

Bailey vs. Railroad Co., 4 Har. 389 at 396. (yr. 1846)

Wharf separate from the main land not allowable.

Sluiceways not allowable.

Proviso.

SEC. 7. From and after the passage of this Act, no person shall erect, place or maintain in the tideway of said rivers, or either of them, within the limits aforesaid, any wharf, platform, or other structure supported on piles, piers or abutments, in such manner as to leave open spaces between such piles, piers, or abutments above the level of low water, (*a*) or any platform or hollow wharf, without completely sheathing the sides and end of the same above the level of low water, with yellow pine or oak plank, not less than three inches in thickness, or construct or maintain any sluiceway or culvert above the level of low water in any wharf or other structure which has been, or may be, erected or placed in the tideway of said rivers, or either of them, within the limits aforesaid. *Provided*, that nothing contained in this section shall be construed to render unlawful the maintenance of any wharf, platform, or other structure heretofore erected or placed in the tideway of either of said rivers, supported on piles, piers, or abutments, as aforesaid, or to render unlawful the maintenance of any sluiceway or culvert heretofore constructed above the level of low water, as aforesaid, or to prevent the erection or maintenance of suitable piers for bridges that are or may be authorized by law, and nothing contained in this section shall apply to the river Delaware.

(*a*) *Saulsbury, Ch.*: A "riparian proprietor holds to the low water mark" (453) and if "a reasonable space" is

"left for the passage of vessels, then it" (a wharf) "is not an unreasonable obstruction." Harlan & Hollingsworth Co. vs. Paschall, 5 Del. Ch. 435 at 454-5. (yr. 1882)

State vs. Reybold, Jr., 5 Har. 484 at 486. (yr. 1854)

And see Sec. 4 of the Act mentioned in Sec. 1, "c" (above) of this Act relating to Harbor Commmissioners.

License from port wardens.

SEC. 8. Any person who shall, at any time after the appointment of port wardens as hereinafter provided, erect, place, or extend in the tideway of said rivers, or either of them, within the limits aforesaid, any wharf, pier, bulkhead, or other structure without having first obtained therefor a license from said port wardens as hereinafter provided, (a) shall

Penalty.

be guilty of a misdemeanor, and upon conviction thereof in the Court of General Sessions of the Peace and Jail Delivery, shall be fined not less than one hundred dollars, nor more

Fine.

than one thousand dollars. *Provided, however*, that if such

Proviso.

wharf, pier, bulkhead or other structure shall, under the provisions of this Act, be in whole or in part a public nuisance, nothing in this section contained shall operate to bar an indictment for maintaining such public nuisance, or to prevent the abatement of the same by said port wardens in manner as hereinafter provided.

(a) As to the Delaware River, see note to Sec. 7, "a," last line thereof.

Nuisance.

SEC. 9. Any person who shall violate any of the provisions of Section 6 or Section 7 of this Act shall be guilty of maintaining a public nuisance, (a) and upon conviction thereof in the Court of General Sessions of the Peace and Jail Delivery shall be fined not less than one hundred dollars nor more than two thousand dollars, and said court, if such pub-

Abatement of nuisance.

lic nuisance shall not then have been abated, shall order the Sheriff of New Castle County forthwith to abate the same under the direction of the Board of Port Wardens of the City of Wilmington, and shall issue to said Sheriff the writ of said court, commanding him to levy and make of the goods and chattels, lands and tenements of the defendant, the costs

Sheriff's writ.

and expense of such abatement by said Sheriff, and all the lands and tenements of the defendant within New Castle County shall be bound for the amount of said costs and expense from the time of the issuance of said order; such writ

shall be executed upon either the real or personal property of the defendant, or both, and returned on the first day of the next term of said court, the Sheriff giving ten days' notice, in a daily newspaper published in the City of Wilmington, of the sale of the property levied on, by the advertisement describing the property to be sold, and appointing the day, hour and place of sale thereof. The sale of any lands and tenements under such writ shall be subject to the confirmation of said court, and upon confirmation thereof said court shall order the execution of a deed or deeds to the purchaser or purchasers, conveying to him, her or them, the lands and tenements so sold. (b) Such conveyance shall have the same operation and vest the same title as a deed by the Sheriff of lands and tenements sold under a writ of *venditioni exponas* issuing out of the Superior Court of the State of Delaware. If such sale of real estate shall not be confirmed, said court may issue further orders of sale thereof, to be executed in like manner. The purchase money of real estate so sold shall not be applied to the payment of such costs or expense of abatement, but shall be held by the Sheriff, subject to the order of said court, until confirmation of the sale. *Provided, however*, that nothing in this section contained shall be construed to limit or qualify the power of the Chancellor to restrain, by injunction, the erecting, placing, or maintaining in the tideway of said rivers, or either of them, within the limits aforesaid, any wharf, platform, pier, bulkhead, or other structures or obstruction, or any culvert, or sluiceway, contrary to the provisions of this act. *And provided further*, that said Board of Port Wardens shall have full power and authority, upon written complaint at any time made to said board, or any member thereof, by any person whomsoever, forthwith to abate and remove any wharf, platform, pier bulkhead or other structure or obstruction, or any culvert, or sluiceway in the tideway of said rivers, or either of them, within the limits aforesaid, so far as the same shall, in the opinion of the said board, violate or be forbidden by the provisions of this act, or any wreck, bar, rock, abandoned material or property, or other accidental obstruction in said rivers, or either of them, within the limits aforesaid, which

Levy and execution.

Notice of sale.

Confirmation of court.

Deed to purchaser.

Title.

Application of purchase money.

Proviso.

Jurisdiction of Chancellor.

Further proviso.

Powers of Port Wardens.

shall, in the opinion of said board, be dangerous to navigation; *and provided further*, that the Chancellor shall have power to restrain, by injunction, any improper exercise by said Board of Port Wardens, of the summary power of removal or abatement hereinabove conferred upon said board. The said Board of Port Wardens shall have power, for the purpose of defraying the costs and expenses of such abatement or removal, to sell any property or material so removed at public sale, first giving ten days' notice thereof in a daily newspaper published in the City of Wilmington, by advertisement, describing the property to be sold, and appointing the day, hour and place of sale thereof; the balance, if any, of the proceeds of said sale, after defraying such costs and expense, together with costs of sale, to be paid to the owner or owners of such property or material, or, in case such owner or owners be unknown to said Board of Port Wardens, to be deposited in the Farmers' Bank of the State of Delaware at Wilmington, to the credit and subject to the order of the Court of General Sessions of the Peace and Jail Delivery. The said Board of Port Wardens shall also have power to recover the amount of the costs and expense of such abatement or removal, or any part thereof, in an action of debt, to be brought by said board in the name of the Board of Port Wardens of the City of Wilmington, against the owner or owners of the property or material so abated or removed, or the person or persons who shall have caused or maintained the nuisance so abated or removed, before any Justice of the Peace in the City of Wilmington; *provided, however*, that an appeal shall lie from any judgment rendered in such action of debt to the Superior Court of the State of Delaware, as in other actions of debt brought before said Justices of the Peace.

Proviso.

Injunction by Chancellor, when.

Costs, how met.

Sale.

Notice.

Proceeds of sale.

Residue, to whom paid.

When deposited in bank.

Board may have an action for debt, when.

Proviso.

Appeal from judgment.

(*a*) *The Chancellor*: "I cannot admit it to be true that the mere fact of the doing a particular thing,—as the driving of a pile, or the building of a wharf beyond the wharf line laid down by the commissioners,—being declared unlawful, will, from that fact simply constitute the pile or wharf line such a public nuisance as will give any private citizen a right to maintain a bill in this Court for an injunction to restrain it."

Harlan & Hollingsworth Co. vs. Paschall, 5 Del. Ch. 435 at 459. (yr. 1882)

See also the case of Gray vs. Baynard, 5 Del. Ch. 499, (yr. 1883)

where the Court held that the building of a bay window beyond the line fixed by law, would not necessarily entitle one to an injunction, though it would subject the offender to indictment.

(*b*) See, as to the vesting of title, Sec. 91, "c" of the Charter.

Not to interfere with necessary drainage.

SEC. 10. Nothing herein contained shall be taken or construed to prevent the Council (*a*) of Wilmington from constructing and maintaining proper sluices, culverts and waterways, for the drainage of said city, or to prevent the present public drains or gutters from being emptied into the aforesaid rivers or either of them, or to prevent the construction or maintenance of sluiceways or waterways for the drainage of marsh or lowlands on said rivers.

(*a*) The Street and Sewer Department has jurisdiction, now, since 1887.
See the case of English vs. Wilmington, 2 Marv. 63. (yr. 1894)
Murphy vs. Wil., 5 Del. Ch. 281. (yr. 1879)

Present wharf lines.

SEC. 11. Nothing hereinbefore contained shall be construed to alter or change any of the wharf lines established on either of said rivers within the limits aforesaid pursuant to any former act or acts of the General Assembly, until the return of the said commissioners shall be made as hereinbefore provided.

Willful interference with land marks misdemeanor

SEC. 12. If any person shall willfully break, pluck up, remove or deface any post, stone, or other landmark which may be fixed, set, established, or adopted by said commissioners or Port Wardens under the provisions of this Act, he shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty dollars, nor more than five hundred dollars. *Provided*, nevertheless, that the Council of Wilmington may, in any proper case, in its judgment, upon written application, by ordinance accord to any person the right to remove any such post, stone, or other landmark, upon such terms and conditions as shall be prescribed in such ordinance, and as shall preserve the certainty of, and the means of ascertaining the lines which may be established or adopted pursuant to the provisions of this Act. Proviso.

Election of Port Wardens.

SEC. 13. The Council of Wilmington shall, at its third stated meeting in June next, elect by ballot a Board of Port

Term of office.

Wardens, consisting of five members, to hold office as follows: One for one year, one for two years, one for three years, one for four years, and one for five years, or until their successors are chosen. And the said Council shall annually thereafter in like manner elect one port warden to succeed the one whose term of office shall have expired as aforesaid, and the person so elected shall hold office for five years, or until his successor is chosen. Whenever Port Wardens are to be elected as aforesaid, the Wilmington Board of Trade, a corporation of this State, shall nominate in writing, at least five days before such election, at least two persons for each and every office to be filled as aforesaid; and the said Council shall elect, as aforesaid, the requisite number of Port Wardens from the persons so nominated, and in case said corporation shall fail to make said nominations as aforesaid, said Council shall elect such persons as they may deem proper. The said Port Wardens, before entering upon the duties of their office, shall be severally sworn or affirmed to perform the same faithfully and impartially to the best of their skill and judgment. Such oath or affirmation may be administered by the Mayor of the City of Wilmington, or by any Justice of the Peace residing therein, and certificates thereof shall be filed in the office of the Clerk of said Council. The said Board of Port Wardens shall annually elect one of their number Master Warden, who when present shall preside at the meetings of said board, and shall perform such other duties as may be prescribed by any law of this State or ordinance of said city. The acts of a majority of said board shall be valid as the acts of all of them, and any vacancy occurring in said board by death or resignation, shall be filled by the remaining members of said board.

Mode of nomination.

Port Wardens sworn.

Election of Master Warden.

Vacancies.

Application for license to erect wharf, &c.

SEC. 14. Any person desiring to erect or extend in the tideway of said rivers, or either of them, within the limits aforesaid, any wharf, pier, bulkhead, or other structure, (a) shall make application in writing to the Board of Port Wardens for a license therefor, and submit therewith a plan and specifications thereof; and if such erection or extension may be lawfully made, said board shall grant its license in writing for such erection or extension. Before any wharf, pier, bulkhead,

or other structure, shall be erected or extended in pursuance of such license, the correct lines thereof shall, under the direction of said board, be furnished by the Chief Engineer of said city, who shall prepare a plan, in duplicate, of the location of such wharf, pier, bulkhead, or other structure, one of which shall be delivered to the person receiving such license and the other to said board, to be filed and preserved in the office of the Chief Engineer of said city. The said Chief Engineer shall receive for his services as aforesaid, a fee of ten dollars, to be paid by the person receiving such license.

Duties of Chief Engineer.

Fees.

(*a*) As to the Delaware River, see note to Sec. 7, "a" of this act—the last line of said note.

SEC. 15. The breadth of water front appertaining to the land of each proprietor or owner on the banks or shores of said rivers, within the limits aforesaid, shall be determined by protracting the lines of such land to the line established by law as the limit to which wharves or other structures may be built, whenever such protraction of said lines will not result in giving to the said owner more, or to any other riparian owner less than his proportionate share of frontage on said wharf line. (*a*) But in case of conflict between riparian owners, arising from the divergence or convergence of the lines of their lands, or the lines of any public street, when the same shall be protracted as aforesaid, the said Board of Port Wardens (*b*) are hereby authorized and empowered to settle and determine the lines and bounds of said owners within the tideway of said rivers, or either of them, and the frontage of said owners respectively on said wharf line; and said board shall thereupon make report in writing of their determination in the premises, with a plot of the lines and frontage so established by them, and file such report and plot in the office of the Chief Engineer of said city, and the same, or a certified copy thereof, shall be competent evidence for all purposes. In the performance of their duties under this section, said board may call to their assistance the Chief Engineer of said city, or any other competent engineer or surveyor, who shall receive for his services in the premises such compensation as shall be fixed by said board, to be paid

Limits of water front, how determined.

Powers of Port Wardens.

Report and plot.

Where filed.

Evidence.

Surveyor.

Compensation.

by the persons between whom such conflict shall have arisen, or either of them, as said board may direct.

(*a*) See Sec. 6 of the Act mentioned in Sec. 1, "c" of this Act. 22 D. L. p. 5, Act March 8, 1901, p. 203 of this volume.

(*b*) The Attorney-General settles disputes (in regard to the Delaware River) of this kind under Act March 8, 1901, 22 D. L. p. 5, Sec. 6. See Sec. 1, "c" of this Act, p. 203 of this volume.

Further powers.

SEC. 16. The said Board of Port wardens (*a*) shall have full power and authority to direct the mooring of ships and vessels in the harbor, and the position and number in which they shall lie at the wharves and docks, and the anchoring of ships and vessels in the Brandywine and Christiana rivers within the limits aforesaid, and to make, ordain and publish such rules (*b*) and regulations in respect to the matters in this section contained as they shall deem fitting and proper, with penalties for the breach thereof; *provided*, that such rules and regulations shall not be contrary to the constitution and laws of the United States or of this State; and *provided*, also, that no penalty so prescribed shall exceed the sum of twenty dollars.

Proviso.

(*a*) See Sec. 7 of the Act March 8, 1901, 22 D. L. p. 5 (as to the Delaware River) where the owners of wharves, &c., may lay, or moor, or allow to be laid or moored, vessels to wharves, and charge therefor, p. 203 of this volume.

(*b*) As to the meaning of "rules" see Sec. 76, "a" of the Charter.

Duties of Port Wardens.

SEC. 17. The said Board of Port Wardens, or any member thereof, shall, upon application of the master or owner of any vessel, or the shipper or consignee of any cargo, coming into port in a damaged condition, view the said vessel or cargo, and certify to the underwriters or other parties interested the extent and character of said damages, and may perform such other duties in the premises as are usually discharged by such officers. And the said board, or member thereof, performing such service, shall receive such compensation therefor as shall be fixed by general regulation of said board, to be paid by the party requiring such service.

Compensation.

Application by Board of Port Wardens to purchase lands, &c.

SEC. 18. Whenever said Board of Port Wardens shall deem it necessary or expedient to purchase or acquire any land on, or adjacent to, the banks (*a*) or shores (*b*) of said

rivers, (c) or either of them, within the limits aforesaid, or any lawful structure in the tideway of said rivers, or either of them, within the limits aforesaid, (whether such land or structure be within or beyond the lines established and determined by said Commissioners in and by their return as aforesaid,) for the purpose of improving the navigation of such river or rivers, or the removing of obstructions to such navigation, they shall for that purpose make application in writing to the Council of Wilmington, therein accurately and fully describing the land or structure proposed to be purchased or acquired as aforesaid, and the new wharf line or lines proposed by them to be established, (if they shall deem any such new line or lines necessary in such case,) together with a plot of the same made under their direction by the Chief Engineer of said city, or by some other competent engineer or surveyor, and thereupon the said Council shall have power and authority, if they shall deem such purchase or acquisition necessary or expedient as aforesaid, to provide, by ordinance, for such purchase or acquisition; and if The Mayor and Council of Wilmington shall be unable to agree with the owner or owners of such land or structure for the purchase thereof, the same may be taken for the purpose aforesaid, in the same manner and subject to the same conditions and proceedings as are or may be prescribed by law for condemning and taking lands for the purpose of extending, widening, laying out or opening streets in said city.

Plot.

Council may provide for purchase.

Condemnation.

(a) *Saulsbury, Ch.*: "The "bank" is the outermost part of the bed in which the river naturally flows."
Harlan & Hollingsworth Co. vs. Paschall, 5 Del. Ch. 435 at 463. (yr. 1882)

(b) *Saulsbury, Ch.*: "Webster thus defines "shore:" "The coast or land adjacent to the ocean or sea, or to a large lake or river." This word is applied primarily to the land contiguous to water." id. 464.

(c) *Saulsbury, Ch.*: "What is a river? "A land current of water bigger than a brook" (Johnson, Dict.); "A large stream of water flowing in a channel on land toward the ocean, a lake, or another river; a stream larger than a rivulet or brook." (Webster, Dict.). Every river, be it public or private, has a bed, shore and bank. Houck, Riv. Sec. 6." id. 463.

Upon the purchase or acquisition of any land or structure as aforesaid, the said Board of Port Wardens shall cause such

Annual appropriation of Council.

What to include.

land or structure, within a reasonable time thereafter, to be dredged, removed, or taken away, and any sum of money which may be agreed upon as the value of such land or structure, or assessed as damages by reason of the taking of the same as aforesaid, as well as the cost of dredging, removing, or taking away such land or structure as aforesaid, shall be included in the next annual estimates and appropriations of the said Council to be made thereafter; *provided*, that the whole amount appropriated by the said Council in any one year, for the payment of land or structures purchased or condemned, and for the cost of dredging, removing, or taking away such land or structure as aforesaid, shall not exceed the sum of fifteen thousand dollars, and that the said Council shall have power to borrow such sum, or any part thereof, on note or bond, if necessary, in anticipation of said annual estimates and appropriations. When by proceedings under this section it shall become necessary to establish any new wharf line or lines, the said Board of Port Wardens shall have power and authority to establish such new line or lines, and upon the acquisition or condemnation of any land or structure by such proceedings, and the establishment by said Port Wardens of such new line or lines, it shall be the duty of the said Port Wardens to make return, in duplicate, of their proceedings in the establishment of such new line or lines, under their hands or the hands of a majority of them, to the said Council, with duplicate plots showing distinctly such new line or lines, with such courses, distances and landmarks as they may have adopted for ascertaining the same, and said returns and plots shall be filed, preserved and recorded as provided in section four of this Act, in reference to the returns of the aforesaid commissioners, and the said duplicate returns and plots respectively, and the records thereof, as well as duly certified copies of the same, or of the record thereof, shall be competent evidence for all purposes. The compensation of the said Chief Engineer, or such other engineer or surveyor as may be employed by said Board of Port Wardens in execution of their duties under this section shall be fixed by said board, and provision for the payment of the same, as well as for the other

Proviso.

New wharf lines.

Duties of Port Wardens.

Duplicate plots and returns.

Evidence.

Compensation of Surveyor.

necessary expenses of said board in the performance of their duties under this Act, shall be made by said Council.

Election of Harbor Master.

SEC. 19. The said Council of Wilmington shall, at its second stated meeting in July next, and annually thereafter, elect a Harbor Master, who shall be nominated by the said Board of Port Wardens. Before entering upon the duties of his office he shall be sworn, or affirmed, faithfully and impartially to perform the same. He shall be the executive officer of said Board of Port Wardens. It shall be his duty to enforce and superintend the execution of all laws of this State and all ordinances of the City of Wilmington, and all rules and regulations of said Board of Port Wardens in relation to the docks, wharves and harbor of the said city, and the waters of the said rivers within the limits aforesaid, and in relation to the regulating (*a*) and stationing ships and vessels in the tideway of said rivers, or at the docks and wharves within the limits aforesaid, and all other rules and regulations of said Board of Port Wardens. It shall also be his duty to enforce any and all orders of said board touching the abatement or removal of obstructions or public nuisances, (*b*) under the provisions of this Act, in the waters of the said rivers within the limits aforesaid. For the purposes aforesaid, the said Harbor Master shall, within the limits aforesaid, have all the power and authority of a County Constable, or Police Constable of said city, and he shall have the right to call to his assistance, in discharge of his duties, the Sheriff, or any constable of New Castle County, or any police officer of said city. If any master or captain of any ship or vessel shall refuse or neglect to comply with the directions of the said Harbor Master in matters within the jurisdiction of his office, or if any person whosoever shall obstruct or prevent the said Harbor Master in the execution of his duties, such master, captain, or other person, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than twenty dollars nor more than five hundred dollars. The said Harbor Master shall be paid by the Council of Wilmington such salary as they by ordinance may determine.

Oath.

Duties.

Powers.

Interference with duties of Harbor Master misdemeanor.

Salary.

(*a*) One of the most important regulations in regard to ships in the

tideway, is that they shall keep on the proper side in sailing, &c., especially when passing other vessels. The law is as follows:

Booth, C. J.: "It is contended that the law of the river is the same as the law of the road, and that vessels in passing are bound to keep to the right. * * The law of the road is, that where two carriages meet on the public road, to avoid collision each shall keep to the right. So, in reference to steamboats meeting each other head on, and there is not room to pass without changing course, each should go to the right. But in either case if there be room to pass, a carriage or a boat, though on the wrong side of the road or river, is not bound to go entirely out of her track to get around another carriage or vessel which is so far out of her direct route, that keeping right on would cause no collision to either, merely in order to pass to the right."

Steamboat Co. vs. Whilliden, 4 Har. 228 at 231-232. (yr. 1845)

(*b*) If a vessel ground, though it be an obstruction, it is not a public nuisance.

Booth, C. J.: "No law prohibits a vessel of the description of the plaintiff's from proceeding up and down the creek for the purposes of trade; nor does her grounding at low tide, and remaining until a high tide might enable her to get off, constitute a public nuisance."

Cummins vs. Spruance, 4 Har. 315 at 319. (yr. 1845)

Penalties, how recovered.

SEC. 20. All fines and penalties imposed by this Act, or by any rule or regulation of the said Board of Port Wardens, shall be recovered in the name of the State of Delaware, and shall be for the use of The Mayor and Council of Wilmington.

Jurisdiction.

SEC. 21. All violations of the rules and regulations of the said Board of Port Wardens shall be within the criminal jurisdiction of any municipal court that has been or may be established by law for the City of Wilmington, and such court may impose any fine or penalty prescribed for the violation of such rule or regulation, not exceeding the sum of twenty dollars.

SEC. 22. All laws and parts of laws inconsistent with this Act are hereby repealed, and the power of revocation of this Act by the Legislature is hereby reserved.

Passed at Dover, April 18, 1883.

Amended, March 27, 1885.

AN ACT to Establish Bulkhead, Wharf and Pier Lines on the Delaware River, in front of the City of Wilmington and Vicinity. 22 D. L. 5.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:

SECTION 1. That the bulkhead line or lines of solid filling, and the pier line in the tide-waters of the River Delaware, lying between the Christiana River and the northerly boundary of Edgemoor, opposite the City of Wilmington and Edgemoor, as fixed, established and adopted, or hereafter to be fixed, established and adopted, by the Secretary of War of the United States, under the acts of Congress in that behalf, are hereby adopted and declared to be fixed and established as the exterior bulkhead and pier lines between the points aforesaid, as such exterior bulkhead and pier lines so fixed, established and adopted, are or may hereafter be shown upon the manuscript map or maps, report or reports, filed in the office of the said Secretary of War or War Department.

Exterior bulkhead and pier lines to be as established and adopted by the Secretary of War.

SEC. 2. That the Secetary of State is hereby authorized and directed to procure duplicate copies of the said manuscript map or maps, report or reports, accompanying the same from time to time, and file one of said copies in his office at Dover, and the other of said copies in the office of the Recorder of Deeds for New Castle County; which said copies when so filed, or certified copies thereof, shall be competent evidence for all purposes.

Secretary of State to procure duplicate copies of maps, &c. To file one in his office, another in office of Recorder of Deeds, New Castle County. When filed shall be evidence.

SEC. 3. That it shall not be lawful to fill in with earth, stone or other solid material in the tide-waters of said river between the aforesaid points, beyond the bulkhead line or lines of solid filling by this act adopted, fixed, established, laid down and exhibited on the aforesaid map or maps, report or reports, except in the construction of duly authorized piers; and no erection or structure of any kind shall hereafter be erected, allowed or maintained beyond or exterior to the aforesaid bulkhead line or lines of solid filling, except duly authorized piers which shall not be less than one hundred and fifty feet distant one from the other, and which

Not lawful to fill in between established points beyond bulkhead lines.

shall in no case extend beyond the lines indicated for piers on said map or maps, report or reports.

Littoral proprietors may erect bulkheads, &c.

SEC. 4. That the littoral proprietors abutting on the River Delaware, between Christiana River and the northerly boundary of Edgemoor, are hereby respectively authorized and empowered to erect bulkheads, wharves and piers on the line or lines now or hereafter to be fixed, established and adopted as provided in Section one (1) of this act, opposite their respective littoral holdings on said river, between said Christiana River and the northerly boundary of Edgemoor; and to fill in with earth, stones or other material, the space or spaces between said bulkhead line or lines of solid filling, shown or exhibited on the map or maps, report or reports aforesaid, and the westerly bank of said river, (designating the high water mark thereof,) between said Christiana River and the northerly boundary of Edgemoor aforesaid. Provided, that nothing herein contained shall operate to prevent the United States from utilizing all or any portion of the space between said bulkhead and the westerly bank of said river for the deposit of dredged material taken from said River Delaware in the progress of the improvement thereof, not exceeding twelve feet in height above mean low water.

United States may utilize space for deposit of dredging material.

Filling in subject to regulations of War Department.

And provided, further, that the filling in of said space between said lines by any littoral proprietor shall be under and subject to the regulations of the War Department of the United States.

Land so made to vest in fee in littoral proprietors.

SEC. 5. That the land under the waters of said river, within the limits aforesaid as hereafter determined, on the front of the littoral holdings of said littoral proprietors respectively, and between the bulkhead line or lines of solid filling, as shown and exhibited on the maps aforesaid, and the westerly bank of said river, (designating the high water mark thereof), shall vest in fee in said littoral proprietors, their heirs, executors, administrators, successors and assigns, respectively. And when a suitable bulkhead shall have been constructed front of any of said littoral holdings, of any of said littoral proprietors, it shall be the duty of the Attorney General, upon satisfactory evidence to him of that fact, and

Attorney General and Secretary of State to prepare grants therefor.

the tender to him of the reasonable and necessary expenses of preparing the conveyance or conveyances hereinafter named, to seasonably prepare, and of the Secretary of State to forthwith execute under the seal of the State, a grant assuring to said littoral proprietors, respectively, their heirs, executors, administrators, successors and assigns, the lands under water in front of their respective littoral holdings aforesaid, between said bulkhead line and the said river bank.

Lengths of water front determined by extending lines of lands to bulkhead line.

SEC. 6. The breadth of water front appertaining to each littoral proprietor or owner of land abutting on the said river bank shall be determined by protracting the line of the land to the bulkhead line established under this Act, wherever the protraction of said lines would not result in giving the said owner more, or to any other littoral proprietor less, than his proportionate share of frontage on said bulkhead line; and in case of a conflict arising from the divergence or convergence of the lines of said littoral proprietors, or of the public streets, the Attorney General is hereby authorized and empowered to settle the said lines outside of said river bank so that equal justice shall be done to all concerned.

Attorney General to have jurisdiction in case of dispute.

Littoral proprietors may own bulkheads and recover wharfage, &c.

SEC. 7. That it may and shall be lawful for the said littoral proprietors, respectively, to own and hold all bulkheads, docks, wharves, buildings and piers that hereafter may be erected pursuant to this act on the front of their littoral holdings respectively; and to use, possess, repair, and keep the same in order, and to lay any steamboat, vessel, or other craft at the same; and to demand, take, sue for, and recover reasonable wharfage, demurrage, rent or dockage of and from any steamboat, vessel, or other craft using the same, and from all persons who may use said bulkhead, docks, wharves, buildings and piers in any way whatsoever, and shall also be authorized to sue for and recover any damage that may be done to the same.

SEC. 8. This act shall be deemed and taken to be a public act and shall be published as such; and that all acts and

parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

Approved March 8, A. D. 1901.

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22 D. L. 251.

AN ACT to provide for the Improvement of the Christiana River.

* * * * * * * * * *

Appropriation by the Mayor and Council of Wilmington for the improvement of the Christiana River, supplementary to an appropriation by the Federal Government.

SECTION 1. That, from and after any future appropriation by the Federal Government for the purposes of the improvement of the Christiana River as hereinabove designated, the Mayor and Council of Wilmington be and it is hereby authorized and directed to pay to such person or persons placed in charge of such future proposed improvements by the United States Government a sum or sums of money not exceeding in the aggregate sixty thousand dollars.

Amount paid in any one year.

Provided, however, that not more than twenty thousand dollars shall be paid on said account in any one year; and further provided, that prior to any such payment so to be made, the person or persons placed in charge of said proposed improvements by the United States Government, shall render to the said Mayor and Council of Wilmington, a detailed estimate as far as possible of all amounts to be expended in the course of said improvements; and further provided, that no such payment so to be made by the said Mayor and Council of Wilmington shall exceed in amount the sum of ten per centum of the sum then already expended as shown by the statement of the Federal official in charge.

How paid.

SEC. 2. That the said sum or sums to be paid by the Mayor and Council of Wilmington, as authorized and directed by the provisions of the preceding Section, shall be paid as other expenses of said City of Wilmington are paid, and shall be provided for by ordinance or otherwise, as Council may direct.

SEC. 3. That this Act shall be deemed and taken to be a public Act, and that all Acts or parts of Acts inconsistent herewith be and the same are hereby repealed.

Approved March 9, A. D. 1901.

CHAPTER VI.

ACT RELATING TO THE POLICE DEPARTMENT.

	Page
1. Act Creating the Board of Police Commissioners	205
2. Act Providing for a Police Pension Fund	217
3. Act Enabling the Matrons of the Police Department to Participate in Benefits of Police Pension Fund...	220
4. Act to Regulate the Business of Pawn Brokers and Junk Dealers	221

AN ACT to provide for a Municipal Police Commission for the City of Wilmington. 19 D. L. 1000.

SECTION 1. The police department of the City of Wilmington shall, on and after the first day of May, A. D. eighteen hundred and ninety-three, be under the control and management of a Board of Police Commissioners, (*a*) to be composed of three sober and discreet persons to be appointed as hereinafter designated. Commissioners, number of.

(*a*) The first police commission act was passed May 15, 1891. *Nicholson, Ch.*: " * the Act Providing for a Municipal Police Commission for the City of Wilmington," was "passed May 15, 1891, being Chap. 223, Vol. 19, Delaware Laws," &c. Bullock's Admr. vs. Wil. C. Ry., 5 Penn. 209 at 215-16. (yr. 1905) (The Act of 1891 was repealed by Sec. 13 of the present Act of 1893.)

SEC. 2. That William M. Pyle, Patrick Monaghan and John W. Lawson, of the City of Wilmington and State of Delaware, are hereby appointed and constituted a "Board of Police Commissioners" for the said city under this Act, with full powers to act as such for the term of two, four and six years respectively, or until their successors shall be duly appointed. And the said William M. Pyle, hereby appointed, shall serve for the term of two years from and after the said first day of May, or until his succecssor shall be appointed; and the said Patrick Monaghan, hereby appointed, shall serve for the term of four years from and after the said first Term of office.

day of May, or until his successor shall be appointed; and the said John W. Lawson, hereby appointed, shall serve for the term of six years from and after the said first day of May, or until his successor shall be appointed. At the expiration of the term of office of either of the said commissioners so appointed, the vacancies shall be filled by the Associate Judge of the Supreme Court,[1] resident in the County of New Castle, of the State of Delaware, by the appointment of a suitable person, who shall have been chosen at least thirty days next preceding the expiration of the said term of office. Such person so appointed, shall hold office for and during the term of six years from the first day of May next ensuing, or until his successor shall have been appointed.

Succeeding Commissioners, how appointed.

The Board of Police Commissioners shall have power to fill and shall fill any vacancies in the Board of Police Commissioners, caused by the death, resignation or incapacity to serve of any of the three said commissioners appointed as aforesaid. The said appointment shall only be for the residue of the unexpired term.

Present Commissioners to fill vacancies.

No person shall be eligible to appointment as a member of the said board who shall not be a citizen of the United States, a qualified voter of this State, and a resident of the City of Wilmington for the five years last preceding his appointment.

Qualifications.

Any member of the said board may be removed for cause after trial, by a two-third vote of the whole "City Council." (a) The reason of removal shall be entered in the journal.

Removal of.

No person shall hold any other municipal office while serving as a member of the said board, and all the members of the said board shall not at one time belong to the same political party.

Shall not hold other municipal office.

Politics of.

Before entering upon the duties of office (b) as commissioner, each member of the said board shall enter into bond to "The Mayor and Council of Wilmington," with one or more sureties, in the penalty of ten thousand dollars, conditioned for the faithful discharge of his official duties, the said bond to be approved by the Judge of the City Court of the City of Wilmington, to be kept and recorded by the clerk in the office thereof, together with the certificates of appointment aforesaid, and

Bond.

Certificate of appointment to be recorded.

1. So enrolled.

shall also take and subscribe before the said judge of the said court, in addition to any oath required to be taken by other municipal officers, (*c*) the further oath or affirmation, that in every appointment or removal to be made by the said board, to or from the police force, created and to be organized by them under this Act, he will in no case, and under no pretext, appoint or remove any policeman or officer, or other person, for any other cause or reason than fitness or unfitness, the qualification or disqualification, as the case may be, of such person, officer or policeman, in the best judgment of the said commissioner, for the place to which he shall be appointed or from which he shall be removed, and the said oath or affirmation shall be recorded and preserved among the records of the said court.

Oath of office.

Record of.

(*a*) The Council, in addition to still possessing the above power, makes appropriations to the Department, and the police force cannot be enlarged or the salaries of the police increased without its consent. This is about the extent of its powers.

Nicholson, Ch.: "The purpose and object of the Street and Sewer Act was manifestly to take the whole subject matter, of the construction, and also the regulation and use of the streets, &c., from "The Council," just as the purpose of the Water Commission Act was to take it away as to water, and of the *Police Board Act as to the police.*"

Bullock's Admr. vs. Wil. C. Ry., 5 Penn. 209 at 217. (yr. 1905)

The Act of 1893, (in force when the above decision was rendered) took the powers away from the Mayor and the old Police Commission; though the Act of 1891 took all powers from the Mayor.

(*b*) As to the phrase "before entering upon the duties of his office," see Sec. 11, "a" of the Charter.

(*c*) See, as to said oath, Sec. 5 of the Charter.

SEC. 3. The said Board of Police Commissioners shall elect their own president, and the Chief of Police for the City of Wilmington for the time being shall be the Secretary of the said board.

President.

Secretary.

SEC. 4. The duties of the said Board of Police Commissioners hereby created shall be as follows:

Duties of Commissioners.

They shall at all times of the day and night, within the boundaries of the City of Wilmington, preserve the public peace, prevent crime, arrest offenders, protect the rights of persons and the rights of property, guard the public health, preserve order at primary meetings and elections, and at all

public meetings and conventions, and on all public occasions, prevent and remove nuisances in all public streets and highways, and all other places, provide proper police force at every fire for the protection of firemen and property, and enforce all laws of the State, (a) and all laws and ordinances, rules and regulations of the City of Wilmington, properly enforceable by a police force. In carrying out and effecting the purposes and object of this Act, the said Board of Police Commissioners shall be clothed with all the powers, and stand in the same position in relation to the organization, control and management of the police force as that occupied by the Mayor, and Board of Police Commissioners created under the Act which is hereby repealed; and shall after the first day of May, A. D. 1893, so far as the purposes and objects of this Act are concerned, be substituted for the commissioners aforesaid, with the same rights, powers, privileges and authorities as were before the passage of this Act, by any means and in any manner whatsoever, vested in the aforesaid commissioners. (b)

General powers.

Repeal of former Act.

(a) A failure on the part of the Department to enforce State laws will not render the city liable in damages to anyone injured because of the same.

Wolcott, Ch.: "Now, could it be claimed with any show of reason, that the duty of the police officers to break up street fights and brawls is not a public duty, and that for the non-performance or neglect thereof the municipality would be liable to anyone for a private injury occasioned thereby? Clearly not, because it is such a duty as relates to the execution of a State law, and the officers charged therewith, though servants of the municipality, are to the extent of such duty, public officers, and for the neglect to perform the same, no municipal liability attaches. The same is equally true as to the duty of police officers in regard to nuisances."

Mayor and Council of Wil. vs. Vandegrift, 1 Marv. 5 at 17-18. (yr. 1893)

(b) *Nicholson, Ch.*: "The act providing for a Municipal Police Commission for the City of Wilmington, passed May 15, 1891 * * provides in Sec. 4 that "in carrying out and effecting the purposes and objects of this act, the said Board of Commissioners shall stand in the same position as is now occupied by the Mayor, and shall, after the first day of May, A. D. 1891, so far as the purposes and objects of this act are concerned, be substituted for the Mayor aforesaid, with the same rights, powers, privileges and authority as were before the passage of this act, by any means whatsoever, vested in the Mayor aforesaid."

Bullock's Admr. vs. Wil. C. Ry., 5 Penn. 209 at 215-16. (yr. 1905)

This section is not exactly like Sec. 4 of the present Act of 1893 (which was in force when the above decision was rendered). Sec. 4 of the present act substitutes the Department for the "Mayor and Board of

Police Commissioners,'' in one place, and in another, merely for the ''Commissioners.'' The Act of 1891 transferred the old powers of the Mayor (concerning the police) to the Board of Commissioners of 1891; and the Act of 1893 need only to have transferred to the new Department the powers of the old Board, which consisted of the Mayor and two other Commissioners.

In speaking of the Street and Sewer, Water and Police Acts, the Chancellor said:

''These acts, taken together, effect the partition of municipal authority in the City of Wilmington.'' id. p. 216.

Fire alarm and telegraph system.

SEC. 5. The said Board of Police Commissioners are hereby given entire jurisdiction and control over the fire alarm and police telegraph system of the City of Wilmington, and shall from the time of their organization have entire management of the instruments and batteries connected therewith, and shall have the appointment of all officials whose duties pertain to the same, and the power to discharge any or all of the said officials, whenever in their judgment the public interest may require it. The salaries of such officials shall remain the same as are now provided by law. All the officers and rooms which are now used for police purposes, as well as for the fire alarm and police telegraph system, shall from the said first day of May next be under the management and control of the said Board of Police Commissioners.

Appointments of officials.

Salaries.

Rooms.

Compensations of members of board.

SEC. 6. The said members of the said Board of Police Commissioners shall be paid for their services yearly salaries in the sum of five hundred dollars each, payable quarterly. The said Board of Police Commissioners are hereby authorized and required, immediately on entering upon the duties of their office, to appoint, enroll and employ a permanent police force ([a]) for the City of Wilmington, which they shall uniform and equip as they may deem necessary under the rules ([b]) and regulations which they may from time to time prescribe; and the said board shall have power to remove any officer of police, policeman, or other person from the force for the violation of any rule or regulation which they may make. The said police force shall consist of one Chief of Police, two captains of police, and such number of sergeants as may be deemed necessary for each police district in the said city, and sixty men; which police force may be increased by the

Police force, appointment of.

Uniforms.

Powers to remove.

How composed.

Increase of.

said board from time to time, provided there is passed by a majority vote of the "City Council," a resolution recommending the same. The qualifications for positions of officer of police and policeman shall be good moral character, sobriety, citizenship in the United States and the State of Delaware, ability to read and write, and physical strength and courage. No person who has been convicted of a crime of felony shall be eligible to the position of officer of police or policeman.

Qualifications.

(*a*) This section limits the police force, and it may not be increased without the consent of "The Council." This Department has practically the powers the Mayor used to have in regard to the police, and the Court decided that the Mayor could not appoint the dog catcher to be a special police officer.

Comegys, C. J.: "He then said it was the opinion of the Court that the Mayor had no authority, under the Charter and ordinances of the city, to appoint him" (the dog catcher) "a constable or policeman," &c.

Foster vs. Mayor and Council of Wil., 8 Houst. 415 at 419. (yr. 1889)

(*b*) As to the meaning of the word "rules," see Sec. 76, "a" of the Charter.

Salaries.

Act of March 16, 1903. 22 D. L. 828.

The pay of the ordinary policeman shall be [nine hundred] dollars per annum, and the said salaries shall be paid monthly; officers of the police shall be paid monthly, and they shall receive the following amounts respectively:

Act of March 16, 1903. 22 D. L. 828.

Chief of Police (*a*) shall receive [eighteen] hundred dollars per annum; each captain shall receive [twelve] hundred dollars per annum; and each sergeant of police shall receive [one thousand] dollars per annum. The salaries of the officers of police and police officers fixed by this Act, shall not be increased by the said Board of Police Commissioners, unless upon a resolution from the "City Council," passed by a majority vote thereof "recommending the same." No member of the police force shall receive any other compensation for his services on the police force, nor as informer, from the city, or any person or individual, for the performance of any duty connected with his position, [unless upon a resolution duly passed by a majority vote of the Board of Police Commissioners recommending the same.]

How increased.

Additional compensation allowed under certain conditions.

Act of April 7, 1903. 22 D. L. 827.

(*a*) The Chief of Police, under the Charter of 1832, was appointed

by "The Council," and was appointed annually. In case he held over, his surety was not liable beyond the year.
Mayor and Council of Wil., vs. Horn, 2 Har. 190 at 192-3. (yr. 1837)

Any person, other than a member of the police department, who shall publicly use such badges and uniforms as the Board of Police Commissioners may prescribe for the use of such members, or shall make use of the whistles, calls or other modes of signaling that are used by the police department, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay to the State of Delaware a fine not less than five dollars or more than twenty dollars.

Unlawfully wearing of uniform or badge.

Using whistles, calls or signals.

Misdemeanor.

Penalty.

[In addition to the officers heretofore named, the said Board of Police Commissioners are hereby authorized and required to appoint, enroll and employ an officer, whose duty it shall be to attend at the public square bounded by Franklin street, Broome street, Seventh street and Eighth street in the City of Wilmington, and who shall perform such other duties as shall be prescribed by the said board. The pay of such officer shall be seven hundred and sixty dollars per year, and to be paid monthly.]

Act of April 26, 1897. 20 D. L. 676.

Additional police officer.

SEC. 7. No Chief of Police, officer of police or policeman shall, while on duty, enter any drinking saloon or other place where liquors are to be sold to be drunk on the premises, except in the discharge of his duties, under penalty of immediate dismissal; no officer of police or policeman shall be a member of any political committee, or be a delegate to any political convention, or shall be present at any such convention, or at any primary, special or general election, except in full official uniform discharging the duties of his office, or shall at such place or in any public place engage in any political solicitation; nor shall any such officer of police or policeman, nor any special officer on the day of any election held within the limits of the said city, be within the distance of thirty feet of any voting place, except for the purpose of depositing his vote, or to quiet an actual disturbance of the public peace, nor shall he in any manner attempt to influence a voter as to the casting of his ballot; and violations as to the provisions of this section

Prohibitions relating to drinking saloons.

Politics.

At voting places.

Penalty.

Cause of dismissal to be recorded.

Misdemeanor.

Penalties.

Suspension.

shall work a forfeiture of his position, and it shall be the duty of the said Board of Police Commissioners to dismiss him from office, and enter upon the record the cause of such dismissal, and he shall not be eligible for reappointment. Any violation of the provisions of this Section shall also be a misdemeanor, and any such officer of police or policeman being convicted thereof, shall forfeit and pay to the State of Delaware a fine not exceeding one hundred dollars, or be imprisoned for a term not exceeding six months, or both at the discretion of the court. Upon complaint made against any such member of the police force to the Municipal Court, verified by affidavit, if the said policeman or officer of police, after hearing, shall be committed or bound for his appearance at the Court of General Sessions of the Peace and Jail Delivery to answer the charge, such officer of police or policeman shall be suspended from the force during trial. (*a*)

(*a*) It may not be amiss to state here, briefly, a few of the general and important powers, duties and liabilities of police officers.

An officer makes an "arrest" by touching, or placing his hands upon the person, although this is not absolutely necessary. If he constrain the person to go with him to prevent a resort to force, it is enough. Only such force may be used as is necessary to make the arrest, and for excess of force the officer is liable criminally and civilly. When he has a warrant, he does not have to show it before he makes the arrest, for in that case the person might escape. After the arrest, if it is demanded, the officer should read, or state the substance of, the warrant. If the offense be a misdemeanor, the officer must have a warrant, unless it occur in his presence. If it be a felony, he can arrest without a warrant, upon what one has told him, or upon "reasonable" suspicion. If the person wanted, be in his home, whether the offense be a misdemeanor or a felony, before he can break open doors and force an entrance, he must first ask and demand *admittance*. If it be a misdemeanor, he must have a warrant; if it be a felony he does not have to have a warrant. Lastly, if an officer be in pursuit of a person, and the offense be a misdemeanor, and the officer cannot overtake the person, and he is sure to escape, still the officer cannot shoot and kill him; and if he should do so, it has been held to be murder. If the offense be a felony, and the officer cannot catch him, and the person is about to escape, the officer may then, but not till then, shoot and kill him, to prevent his escape.

ARREST

Harrington, Justice: "To constitute a legal arrest the officer must lay his hand on the defendant, or otherwise take possession of his person. He must make him his prisoner in an unequivocal form; * * it has been decided, that if an officer so treat a party as to constrain him to go with him, to prevent a resort to actual force, this is an imprisonment."

Lawson vs. Buzines, 3 Har. 416 at 418. (yr. 1842)
State vs. Mahan, 3 Har. 568 at 569. (yr. 1842)
State vs. Townsend, 5 Har. 487 at 488. (yr. 1854)

Petit vs. Colmery, 4 Penn. 266 at 270-271. (yr. 1903) quoting language in the Buzines case.

FALSE ARREST AND IMPRISONMENT

Harrington, Justice: "An imprisonment is any forcible detention of a man's person, or control over his movements." (See above note as to imprisonment by constraint, &c.)

Lawson vs. Buzines, 3 Har. 416 at 418. (yr. 1842)

Murphy vs. Countiss, 1 Har. 143 at 143-4. (yr. 1833)

Marshall vs. Cleaver, 4 Penn. 450 at 453. (yr. 1903)

Petit vs. Colmery, 4 Penn. 266 at 267. (yr. 1903)

McCaffrey vs. Thomas, 4 Penn. 437 at 441. (yr. 1903)

The Court: " * the false imprisonment, if proved, will entitle the plaintiff to recover, and not merely for the time the constable was bringing him to jail, but for the whole period of his imprisonment."

Murphy vs. Countiss, 1 Har. 143 at 144. (yr. 1833)

WHAT FORCE MAY BE USED

Booth, C. J.: "A person having authority to arrest another must do it peaceably, and with as little violence as the case will admit of; * * if resisted, he may use force sufficient to effect his purpose; but if no resistance be offered or attempt at escape, he has no right, rudely and with violence, to seize and *collar* his prisoner."

State vs. Mahan, 3 Har. 568 at 569.)yr. 1842)

State vs. O'Neil, 1 Houst. Cr. Cas. 468 at 473. (yr. 1875)

See Petit vs. Colmery, 4 Penn. 266 at 269. (yr. 1903) (Officer may take assistance with him.)

Nor to *clutch him by the throat.* A person may repel this, in self-defence, with reasonable force.

State vs. Dennis, 2 Marv. 433 at 437. (yr. 1895) *Grubb, J.*

"Nor ever beat an unresisting man."

State vs. Lafferty, 5 Har. 491. (yr. 1854) *By the Court.*

Nor subject him to *"any cruel or unnecessary exposure * * to cold,"* or deprive him *"of suitable clothing or covering while he is in the carriage with, and in the custody of the officer," &c.*

Petit vs. Colmery, 4 Penn. 266 at 269. (yr. 1903) *Boyce, J.*

Nor fire or shoot into one's house, if the person wanted has not fired at the officer.

State vs. Oliver, 2 Houst. 585 at 608. (yr. 1855) *Harrington, C. J.*

By the Court: "For such abuse of authority he would be very properly held responsible, even to an exemplary extent."

State vs. Lafferty, 5 Har. 491. (yr. 1854)

State vs. Dennis, 2 Marv. 433 at 437. (yr. 1895) and above cases.

ARREST WITH OR WITHOUT WARRANT

Lore, C. J.: "It is well settled that a peace officer * * may arrest a person without a warrant for an offense committed in the presence and view of such officer, for which he would have a right to make the arrest with a warrant if committed out of his presence," * * and it "must be made at the time of the commission of the offense, or in the immediate pursuit of the offender."

Marshall vs. Cleaver, 4 Penn. 450 at 452. (yr. 1903)

McCaffrey vs. Thomas, 4 Penn. 437 at 440. (yr. 1903)

State vs. Russell, 1 Houst. Cr. Cas. 122 at 124. (yr. 1862)

(The above were cases of persons who were drunk and disorderly.)

He may arrest persons engaged in a fight "whom he found *actually engaged* in it at the time he came up."

State vs. Dennis, 2 Marv. 433 at 435. (yr. 1895) *Grubb, J.*

In the case below cited an officer was told a fight was going on in a certain place. He hurried there, and saw a man running from the place

and arrested him. He was one of the guilty men, but the officer did not see the fight, and the Court held the arrest illegal.

State vs. Crocker, 1 Houst. Cr. Cas. 434 at 435. (yr. 1874) *Gilpin, C. J.*

In the case below cited the Court held differently, in a breach of the peace case.

Harrington, J. "A peace officer * * has the right to arrest, even without warrant, a person concerned in a *breach of the peace,* or other crime; or when he has *reasonable ground to suspect* the party of such offense."

State vs. Brown, 5 Har. 505 at 507. (yr. 1854)

And the Court held an officer, without warrant, could enter a disorderly house to suppress disorder and arrest disorderly persons.

State vs. Lafferty, 5 Har. 491. (yr. 1854); and see 3 Cyc. Law and Proced. p. 893, to the same effect.

"He also" (an officer) "has a right at common law, to arrest without a warrant, anyone he suspects to be guilty of felony, whether he acts upon his own knowledge, or upon facts communicated by others."

1 Am. and Eng. Encyc. Law, p. 733.

SEARCH WARRANT

Unless the warrant *expressly* give the right, the house must be entered in day time, and not at night. "Night time" means that time when the sun is below the horizon, except that period of time just after the setting, and before the rising, of the sun, during which time there is sufficient light to discern the countenance of a man. This space of time is "day time."

Petit vs. Colmery, 4 Penn. 266 at 271. (yr. 1903)

BREAKING INTO ONE'S HOUSE

Harrington, C. J.: "Thus if an officer, having a warrant to arrest a man for a crime or misdemeanor, finds him at his house, he may not break into the house, until he has *demanded admittance and been refused.* He may not attack the house or the person within with violence, until he has been resisted, and thus obliged to resort to violence; he may not fire upon the house or the person within it, until he has been so fiercely resisted and opposed, as to make that kind of attack prudent and necessary."

State vs. Oliver, 2 Houst. 585 at 606. (yr. 1855)

Houston, J.: "Had he gone to List's door, notified him of his business and purpose, and demanded his surrender, and he had refused to give himself up to him, as his prisoner, he would then have been warranted and justified in forcing an entrance into it through the door by breaking it open, if necessary, and yet even in that case he should have proceeded to make the arrest as peaceably and gravely as possible, and without angry menaces or threats of vengeance or violence."

State vs. List, 1 Houst. Cr. Cas. 133 at 146. (yr. 1863)

(The officer in this case chased List to his house, and reached the door before List could close it. He did not ask List to surrender or let him in, but forced his way in. List shot and killed the officer in his home, and on trial for murder, was acquitted by the jury.)

(A man's house is his "*castle,*" and an officer should not overstep the law in such a case.)

"When a felony has been actually committed, or a dangerous wound given, a peace officer may justify breaking an entrance door to apprehend the offender without any warrant."

1 Am. and Eng. Encyc. Law, p. 748.

State vs. Oliver, 2 Houst. 585 at 607. (yr. 1855)

WHEN AN OFFICER MAY, AND MAY NOT, SHOOT A FLEEING PERSON

Gilpin, C. J.: "Where he is in pursuit of a felon, or one who has committed a felony with power or authority to arrest him, and he cannot overtake him, he may kill him to prevent his escape from him, and it will be justifiable in law; but where he is in pursuit of a person charged with a misdemeanor merely, and has a warrant to arrest him, and cannot overtake him, he is not justified in killing him to prevent his escape from him, and if he does, he will be guilty of murder."

State vs. O'Neil, 1 Houst. Cr. Cas. 468 at 473. (yr. 1875)

And if the bullet miss the fleeing person, and kill another, it will still be murder. id. 474.

State vs. List, 1 Houst. Cr. Cas. 133 at 144. (yr. 1863)

In speaking of killing one for a misdemeanor, in the case below cited, the Court said:

Houston, J.: "* * it will at least be manslaughter in contemplation of law under any circumstances, and may amount to murder, when they are of a wanton, cruel and aggravated character."

State vs. List, (above) p. 144.

WARRANT DOES NOT HAVE TO BE SHOWN TILL AFTER ARREST

The Court: "* * that with regard to a known public officer * * it was not necessary for him either to produce his warrant or state his character and authority *before* making the arrest. * * it might be defeated by the ceremony of producing and explaining a paper before the arrest is made. It is quite time to produce the authority on the demand of the party arrested, and *after* the arrest."

State vs. Townsend, 5 Har. 487 at 488. (yr. 1854)

Petit vs. Colmery, 4 Penn. 266 at 268. (yr. 1903) *Boyce, J.*, quoting the above language.

A few of the principal felonies are: Murder, manslaughter, arson, rape, robbery, burglary, larceny, forgery, perjury, sodomy, kidnapping, knowingly receiving stolen goods, assault with intent to commit murder, &c.

A few of the misdemeanors are: Drunkenness, blasphemy, wilful trespass, disorderly conduct, and nuisances in general, bigamy, assaults and batteries, prize fighting, riots, gambling, obtaining money under false pretences, embezzlement by bailee, embezzlement by cashier, servant, agent or clerk, &c.

Laws relating to Police Department now in force to continue until changed.

Duties of Secretary relative to bills.

SEC. 8. The ordinances, rules and regulations of the said city now in force relating to the police department shall remain in force until the same are changed in whole or in part by the said Board of Police Commissioners. (*a*) The Secretary of the said board shall keep a correct copy of all bills for expenses which shall be approved by the said board before payment.

(*a*) The ordinances, &c., must be changed in accordance with law.

Matrons.

SEC. 9. The said Board of Police Commissioners shall appoint two suitable women as matrons at the station house in the said city, one for day service and one for night service, and shall supply them with a furnished office room in the said station house. The said matrons shall be subject to removal

Duties.

for cause after hearing by the said board, which is invested with exclusive jurisdiction in the premises. The duties of such matrons shall be to give such care and advice and perform such other public duties as may be requested and proper to female prisoners and refugees confined in the said station house.

Physician of the Board.

Qualifications.

Duties of.

Salary of

Tenure of office.

SEC. 10. The said Board of Police Commissioners are hereby authorized to appoint and commission annually a physician of integrity and capacity, resident of the City of Wilmington, who shall have practiced therein the profession of medicine at least three years next preceding the date of his commission, to act as physician of the Board of Police Commissioners for the said city, under such rules and regulations as the said board may prescribe for his conduct. The duties of such physician shall be to examine thoroughly all applicants for positions on the police force of the said city, and to test their entire fitness in every respect for the said position; to visit all policemen, officers of police and turnkeys who may be returned as sick, and report their conditions to the said board; and to perform all other professional duties in connection with the said department and police force as the said board may from time to time direct. The annual salary of the said physician shall be the sum of three hundred dollars, payable in equal monthly installments; but the tenure of the office of the said physician shall be determinable within the appointed year for cause by a majority vote of the said board and under their exclusive direction, and the said physician shall be compensated only up to the time of such determination of his office and at the rate of the annual salary aforesaid.

Annual contingent fund.

SEC. 11. The said Board of Police Commissioners shall be allowed an annual contingent fund of one thousand dollars to conduct detective secret service or other work pertaining to the police department, when in their judgment it is necessary.

Expenses of Police Department, how paid.

SEC. 12. All expenses of the police department, including salaries, shall be paid by "The Council" upon bills pre-

sented to it, marked with the approval of the Board of Police Commissioners, and properly audited by the City Auditor in the same manner as other bills against the said city are now passed.

SEC. 13. Chapter 223, Volume 19, Laws of Delaware and all other laws and ordinances inconsistent herewith are hereby repealed, and it is further provided that the provisions of this Act shall not be operative until the first day of May, A. D. 1893.

Passed at Dover, April 18, 1893.

AN ACT providing for a Police Pension Fund, for the Members of the Police Force of the City of Wilmington. 24 D. L. 369.

SECTION 1. Whenever a member of the police force of the City of Wilmington shall have become disabled or incapacitated while in the active performance of official duty and whenever any member of said force who has performed faithful continuous service as such member for a period of not less than fifteen years shall have become permanently incapacitated from performing such regular active duty, he may be retired by the Police Commissioners of the City of Wilmington from regular active services and placed upon the retired list, and all members of said force, who shall have performed faithful continuous services as such member for a period of at least twenty-five years may, upon their own application, be placed upon the retired list, whether they are disabled or not. Each person so retired shall be entitled to receive from the fund herein directed to be established an amount equal to one-half of the amount of his salary at the time of his retirement, so long as he may remain upon the retired list, said sum to be paid monthly, provided said fund shall be sufficient for the payment of all persons entitled to receive same, and in case it shall not be sufficient for that purpose at any time, then the claim of all persons entitled shall abate proportionately.

When policemen may be retired.

Retired policemen to be pensioned.

SEC. 2. No member of said force shall be so retired until he has been duly notified by said Police Commissioners of

Policemen to be retired only on notice.

their intention so to retire him, and until he has had a fair opportunity of being heard in opposition thereto, provided that any member of said force deeming himself entitled to the benefits of this Act, may make written application to said Police Commissioners for that purpose. No member of said police force shall be placed upon said retired list unless he shall have first undergone an examination as to his physical condition to be made by a Board of Physicians, consisting of the Police Surgeon of the City of Wilmington, the family physician of the said police officer, and a third reputable physician of the City of Wilmington to be selected by the other members of the said Board; said Board shall report in writing to the Police Commissioners the result of said physical examination together with a statement as to how far, in the opinion of said Board, the officer examined is incapacitated from performing regular active duty on said police force; upon the receipt of said report of said Board of Physicians, it shall be the duty of the said Police Commissioners to appoint a committee of four members of the police force of the City of Wilmington (two members to be appointed from each of the two leading political parties), to hear and determine the matter of the retirement of said officer, and the Chief of Police of the City of Wilmington shall constitute a fifth member of said committee; and after such committee of five shall determine in favor of the retirement of any officer, the Police Commissioners may retire such officer in accordance with the provisions of this Act.

Must be examined before retired.

Report of examination.

Hearing upon retirement being recommended.

Commissioners may require any member to be re-examined.

SEC. 3. Said Commissioners may at any time require any officer on the retired list, except those retired by reason of having served twenty-five years, to be re-examined by the surgeon of said force or some other competent physician authorized by said Board to act in the premises, and if on such re-examination said officer is reported capable of performing regular duty, he may be required by said Commissioners to return to regular duty in the same rank or grade in which he was serving at the time of his retirement.

When retired men may be returned to duty.

Pension Fund Trustees.

SEC. 4. The Board of Trustees of the Police Pension Fund shall consist of the members of the Police Commission

of the City of Wilmington or other Board or body of officials having control of the Police Department of the City of Wilmington; the Chairman of the Finance Committee of the Council of Wilmington, the Chairman of the Police Committee of the Council of Wilmington, and five members of the police force of the City of Wilmington; said five members to be elected annually by the vote of the members of the police force of the City of Wilmington. The presiding officer of the Police Commission of the City of Wilmington, or of any other Board or body of officials having charge or control of the said Police Department, shall be the president of the Board of Trustees of the said Police Pension Fund. The Board of Trustees of the Police Pension Fund shall appoint a secretary from among their own number. The said secretary shall execute a bond for the faithful performance of his duties with respect to the Police Pension Fund in such sum and form and with such surety as will be satisfactory to the said Board of Trustees. The cost of said bond shall be defrayed from the proceeds of the fund hereinafter created.

How chosen.

President.

Secretary.

Sec. 5. All moneys collected in payment of fines imposed by said Police Commission upon members of the police force, all moneys deducted or withheld from the pay of members of the police force by reason of absence from duty from any cause, all moneys donated to this fund, all moneys derived from the sale of unclaimed property coming into the possession of said Police Department shall be credited to said Police Pension Fund. The Trustees of the Police Pension Fund may also receive such annual sums from each member of the police force as he may voluntarily agree to, to be paid monthly to said Police Pension Fund, which sum shall not be less than one per cent. of the salaries of all members of the police force of the City of Wilmington, who shall participate in the benefits of said Police Pension Fund. The City Council of Wilmington shall annually appropriate not less than two thousand dollars which shall be credited to the Police Pension Fund.

Pension fund, from what sources derived.

City Council appropriation.

The Treasurer of the City of Wilmington shall be the custodian of said Fund and shall disburse the same upon

Custodian of said fund.

written order of the Board of Trustees. Said Treasurer shall execute a bond for the faithful performance of his duties with respect to this Fund and in such sum and form and with such surety as will be satisfactory to said Board of Trustees. The cost of said bond shall be defrayed from the proceeds of the fund herein created.

Investment of said funds.

SEC. 6. The Board of Trustees of said Police Pension Fund may invest any part of said Police Pension Fund that they may deem proper in national, state, county or municipality bonds, or in first bond and mortgage on improved city real estate, said Board of Trustees shall make a report to the City Council of the City of Wilmington of the condition of said fund on the first day of April of each year.

When retired list may be begun.

SEC. 7. No member of said police force shall be placed upon said retired list by said Police Commissioners until such time as the said Police Pension Fund created by Section 5 of this Act shall have amounted to at least the sum of five thousand dollars.

SEC. 8. All Acts or parts of Acts inconsistent with the provisions of this Act be and the same are hereby repealed.

Approved March 21, A. D. 1907.

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25 D. L. 319.

AN ACT to Enable the Matrons of the Police Department of the City of Wilmington to Participate in the Benefits of the Police Pension Fund.

Matrons to be deemed members of police force for certain purposes.

SECTION 1. That the matrons employed in the police department of the city of Wilmington shall, for the purpose of participating in the benefits of the Police Pension Fund, be deemed and taken to be members of the police force of the City of Wilmington, and shall be entitled to the benefits of said fund and liable for all assessments and bound by all the rules as any other member of the police force of the City of Wilmington.

SEC. 2. That all Acts or parts of Acts inconsistent herewith are hereby repealed.

Approved February 25, A. D. 1909.

AN ACT entitled "An Act to Regulate the Business of Pawn Brokers and Junk Dealers within New Castle County, and Repealing Chapter 374, Vol. 20, Laws of Delaware, and Chapter 14, Vol. 21, Laws of Delaware." 24 D. L. 308.

* * * * * * * * * * *

Pawn brokers and junk dealers to keep records, &c.

Records, what to contain.

Police department of Wilmington to furnish such records.

SEC. 5. That every person, corporation or firm conducting the business of a pawn broker or junk dealer shall keep a book or books in which shall be fairly written in English at the time of each loan or purchase an accurate account and description of the goods, articles or things pawned, pledged or purchased, the amount of money loaned thereon or the amount of money paid therefor, the time of pledging or purchasing the same and the rate of interest to be paid on such loan, together with the description of the person pawning or pledging or selling such goods, articles or things, including the color of his complexion, color of eyes and hair and his or her stature and general appearance. The said book or books shall be prepared by and furnished to such person, corporation or firm so conducting the business of a pawn broker or junk dealer by the police department of the City of Wilmington at the expense of such person, corporation or firm so conducting the business of pawn broker or junk dealer. "In addition to the provisions of this Act, herein specified, it shall also be the duty of any person or persons engaged in the business of Pawn Broker, to furnish to each applicant or customer a ticket on which is printed a number corresponding with the number used to identify the article placed in pawn, also the amount given in cash, together with all charges, and the total amount to be paid when article is to be redeemed. There shall also be duplicate tickets as above which shall at the end of each week be returned to the Chief of Police of the City of Wilmington."

* * * * * * * * * * *

Record opened to inspection of certain officers.

SEC. 7. The said book, so provided for in Section 5 of this Act shall at all times be opened to the inspection of the Judge of the Municipal Court of the City of Wilmington, the Attorney-General, the Deputy Attorney-General of the State, the Chief of Police and the Police Officers of the City of Wil-

mington, the State detectives and other peace officers resident in New Castle County.

* * * * * * * * * * *

Certain officers may make search in building, examine any pledged articles and make seizure.

SEC. 12. It shall be the duty of every person, corporation or firm engaged in the business of a pawn broker or junk dealer under this Act and of every person employed in the conduct of such business to admit to any and every part of the premises designated in the license at any time any member of the police force of the City of Wilmington or other peace officer of the State to examine any goods, articles, things, pledges, pawns, book or books or other record on the premises, and to search for and to take into possession any article known or believed by such police officer of the City of Wilmington or peace officers of the State to have been stolen, and such police officer of the City of Wilmington and peace officer of the State is hereby given full power and authority to make any such search or seizure as is provided for in this Act.

Duty of such dealers to seize stolen goods and notify certain officers.

SEC. 14. That it shall at all times be the express duty of any person, corporation or firm so conducting the business of a pawn broker or junk dealer to seize or take into possession any goods offered to such person, corporation or firm as a pledge or pawn or for sale, which such person, corporation or firm has reason to believe has been stolen and it shall further be the duty of such person, corporation or firm to immediately notify the police department of the City of Wilmington of such seizure together with the description of such person or persons offering such goods for sale, pawn or pledge.

* * * * * * * * * * *

Penalty for violation of act.

SEC. 16. That any person, corporation or firm violating any of the provisions of this Act shall be guilty of a misdemeanor and upon conviction therefor shall forfeit and pay a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1000.) for the use of New Castle County. "Provided that in default of the payment of any fine imposed under the provisions of this Section the Court shall impose

upon conviction a term of imprisonment of not less than one month nor more than one year for each and every offense.''

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Approved April 9, A. D. 1907.

CHAPTER VII.

ACT IN RELATION TO THE STREET AND SEWER DEPARTMENT.

1. Act Creating the Board of Directors of the Street and Sewer Department.

18 D. L. 352.

AN ACT in relation to the Streets and Sewers of the City of Wilmington.

SECTION 1. That on and after the first day of July, A. D. one thousand eight hundred and eighty-seven, (1887) "The Mayor and Council of Wilmington," a corporation of the State of Delaware, is hereby authorized through the agency of a board of directors of a "Street and Sewer Department" (*a*) hereby created, constituted and appointed, their successors in office, further to extend or to widen [or alter the course and direction of] any street, square, lane, road or alley laid down upon the map, plan (*b*) or ground plot of the City of Wilmington, and likewise to lay out (*c*) all necessary new streets, squares, lanes, roads or alleys within said city, except where heretofore expressly prohibited by legislative enactment still subsisting, and after the time aforesaid, to have entire jurisdiction and control within the limits of said city of the streets, squares, lanes, roads or alleys thereof, said jurisdiction and control to extend from building line to building line, and the entire jurisdiction and control within the limits of said city of the drainage thereof, and may open gutters, drains and sewers within the limits thereof, and regulate, maintain, cleanse and keep the same and the natural water courses, runs and rivulets within said limits, open, clear and unobstructed, (*d*) and further, shall after the time aforesaid, have the same rights and powers, and be vested with the same authority over the said streets, squares, lanes, roads, alleys, gutters, drains, sewers, natural water courses, runs and rivulets within the limits of said city, as are now held and exercised by "The Council" of

Street and Sewer Department created.

Act of March 24, 1903. 22 D. L. 840.

Extension of streets.

Control of the streets.

Drainage.

General powers.

the said City of Wilmington, under the charter, laws, ordinances and regulations appertaining to or in any manner made for the government of said city. The said Directors of said Street and Sewer Department shall also, after the first day of July, A. D. 1887, have jurisdiction and control over the removal of all ashes, dirt and other rubbish incidental to housekeeping within said city, as fully and completely as "The Council" aforesaid has heretofore had and exercised said jurisdiction and control.

(*a*) *Spruance, J.*: "The act creating the Board of Directors of the Street and Sewer Department, passed April 20th, 1887, Chap. 188 of 18 Del. Laws, expressly gave the corporation, through the agency of said Board, the rights and powers in respect to streets, sewers, &c., which were heretofore held and exercised by "The Council" of the city."

Weldin vs. Wil., 3 Penn. 472 at 489. (yr. 1902)

Nicholson, Ch.: "The purpose and object of the Street and Sewer Act was manifestly to take the whole subject matter of the construction, and also the regulation, of the use of the streets, &c., from "The Council."

Bullock's Admr. vs. W. C. Ry., 5 Penn. 209 at 217. (yr. 1905)

(*b*) If the city open and grade a street according to the city plan, it is not liable for damages caused by draining water upon adjacent property. The property owner must bring his property to grade. But the city must take care of running water.

The Court: "The owners * * hold them" (lots) "subject to this plan * * and are bound to build in conformity with that plan."

Clark vs. Wil., 5 Har. 243. (yr. 1849)

(That the city is not liable in damages, for change of grade, is horn book law.)

(*c*) The meaning and scope of the phrase "lay out," &c., is given below, especially, as bearing upon the word "widen."

Lore, C. J.: "While there was authority given in the statute to lay out a new road, to change the course of a road already laid out, or to vacate a road, * * yet there was no power given therein to *widen* a road."

The Court held the word "change," standing alone, and unmodified, could mean "alter."

Petition Alston et al, 1 Penn. 359 at 360. (yr. 1898)

On the same matter is the following:

"Under the general powers of the commissioners of a town, conferred upon them by their charter, in relation to *opening* new streets in it, they have a right to straighten and widen a public road laid out under a previous act of the Legislature, by the commissioners appointed under it."

Lofland vs. Orton et al, 4 Houst. 622. (yr. 1874) syllabus.

In laying out, widening, &c., streets, roads, &c., the Street and Sewer Department should always avail itself of the expert and professional skill of the city surveyor. This will, generally, avoid liability.

Huey vs. Richardson, 2 Har. 206. (yr. 1837)

Harrigan vs. Wil., 8 Houst. 140 at 143-4. (yr. 1888)

(*d*) The city is bound to keep its sewers unobstructed.

Lore, C. J.: "If * * damage resulted from obstruction in the sewer by reason of sand, stones and other refuse, which the city negligently permitted to be and remain in the sewer," the city is liable to the person or persons injured thereby.

Hession vs. Wil., 1 Marv. 122 at 138. (yr. 1893)

In the above case the Court held that the time and plans of enlarging sewers, even when known to be inadequate, as well as the time and plans of the original construction of them, were all within the discretion of the city, and that it was not liable for errors honestly made, &c., in this respect. id. 137.

See Magarity vs. Wil., 5 Houst. 530 at 537. (yr. 1879)

See Harrigan vs. Wil., 8 Houst. 140 at 153. (yr. 1888) (This case must be read with the Magarity and Hession cases to understand the law correctly.)

Directors.

SEC. 2. That Joseph L. Carpenter, Jr., James Murray, and J. Newlin Gawthrop, all of the City of Wilmington and State of Delaware, are hereby appointed and constituted a Board of Directors of the "Street and Sewer Department" for said city under this Act, with full power to act as such, for the term of two, four and six years as hereinafter specified respectively, or until their successors shall be duly appointed. That at the first meeting, after the passage of this act, said directors shall determine their terms by lot, and shall certify the result in duplicate to the City Council and to the Recorder of Deeds of New Castle County; the said certificate shall be recorded by the said Recorder of Deeds, and the original, or the record thereof, or a duly certified copy of the record, shall be evidence in all the courts of this or elsewhere State.[1] The director who draws the two years' terms[2] shall serve to and until the first day of April, A. D., one thousand eight hundred and eighty-nine (1889); the director who draws the four year term shall serve to and until the first day of April, A. D., one thousand eight hundred and ninety-one (1891); the director who draws the six year term shall serve to and until the first day of April, A. D., one thousand eight hundred and ninety-three (1893). At the expiration of the term of the said director who shall draw the shortest term, and biennially thereafter, the place of the retiring director shall be filled by ap-

Terms of office. How determined.

1. So enrolled.

pointment by the Mayor of the City of Wilmington for the term of six years. (a)

(a) The Directors are public officers, but municipal, and not State, officers. The nature of their *duties* (not the method of their appointment) decides their status.

Nicholson, Ch.: "Thus the Governor, in the first instance, appointed the Directors of the Street and Sewer Department. This, according to the above contention, would make them State officers. At the expiration of the term of each of the appointees, his successor under the law is appointed by the Mayor. Therefore, after the Mayor made the first appointment, there would be two State Directors and one city Director, and so on as each new appointment was made until all of said Directors would be city Directors."

State vs. Churchman, 3 Penn. 361 at 371. (yr. 1902)

The Chancellor gave the above illustration to show the absurdity of the contention that the *manner of one's appointment* fixed his status as a State or city officer.

Who are eligible as members of the board.

No person shall be eligible to appointment as a member of said board who shall not be a citizen of the United States, a qualified voter of the State, and a resident of the City of Wilmington for the last five years next preceding his appointment. Any member of said board may be removed for malfeasance in office by the Mayor of said city, with the concurrence of two-thirds of the whole City Council. The reason for the removal shall be entered in the journal. The members of said board shall hold no other municipal office during his or their membership in said board. The said board shall have power to fill and shall fill any vacancies in its own membership, except where there are two or more vacancies at the same time, in which case the Mayor aforesaid shall appoint directors to fill the unexpired term. All the members of said board shall not at any one time belong to the same political party. Each member of said board shall before entering upon his duties, in addition to any oath required to be taken by other municipal officers,(b) take and subscribe and file in the office of the Mayor of the said city an oath or affirmation that he will faithfully perform his duties as a director in the Street and Sewer Department of said city, and that he will neither be concerned nor interested pecuniarily, either directly or indirectly, in any contract for work or materials furnished for or about the erecting, construction or repairs of said streets, squares, lanes, roads, alleys, gutters, drains, sewers, natural water courses, runs and rivulets, while a member of said

Member may be removed.

Vacancies, how filled.

Shall not be of same political party.

Oath.

board; and further that he will not be controlled in any vote or action as a member of said board by political or partisan consideration.

(*b*) This oath is contained in Sec. 5 of the Charter.

Time of organization.

SEC. 3. On or before the first day of May, A. D., one thousand eight hundred and eighty-seven (1887), the said directors of said department hereby constituted shall assemble and organize by selecting one of their number to preside over their deliberation. All questions arising in said board shall be determined by a vote of a majority, except where it is hereafter otherwise expressly provided.

Salary.

SEC. 4. The said directors of the Street and Sewer Department shall be paid for their services from the first day of April, A. D. one thousand eight hundred and eighty-seven (1887) yearly salaries as follows, viz: To each the annual sum of five hundred dollars ($500) payable quarterly. The said "The Mayor and Council of Wilmington," may after the said first day of July, A. D. one thousand eight hundred and eighty-seven (1887), by the agency aforesaid, for the purpose of opening, widening, improving or repairing any street, square, lane, road or alley, or for opening, maintaining, cleansing, improving or repairing any gutter, drain, sewer, natural water course, (*a*) run or rivulet within the limit of said city, enter upon and condemn private property and assess the benefits and damages thereof, and have the same ascertained, collected and paid in the same manner and under the same laws, ordinances, rules and regulations as are now prescribed for the government of "The Council" of said city in similar cases. (*b*) The said directors of said street and sewer department shall, after the time last aforesaid, have control of all matters relating to said streets, squares, lanes, roads, alleys, gutters, drains, sewers, natural water courses, runs and rivulets, and all the machinery, tools, buildings, rights, franchises, books, accounts and other property of whatsoever nature or kind appertaining to the management of said streets, squares, lanes, roads, alleys, gutters, drains, sewers, natural water course, runs and rivulets in virtue of any law, ordinance, rule or regulation now or hereafter in

May enter upon and condemn private property.

Damages. How paid.

force. In carrying out and effecting the purposes and objects in this Act, the said board of directors shall stand in the same position as is now occupied by "The Council," and shall, after the said first day of July, A. D. one thousand eight hundred and eighty-seven (1887), so far as the purposes and objects of this Act are concerned, be substituted for "The Council" aforesaid, with the same rights, powers, privileges and authority as were before the passage of this Act by any means whatsoever vested in "The Council" aforesaid, (*c*) *provided*, that to and until the said first day of July, A. D. one thousand eight hundred and eighty-seven (1887), "The Council" aforesaid shall have the same rights, powers, privileges and authority, and be vested with the same jurisdiction and control over the said streets, squares, lanes, roads, alleys, gutters, drains, sewers, natural water courses, runs and rivulets, as it has heretofore had and exercised, except that said Council shall not have the right after the passage of this Act (and it is hereby expressly forbidden) to enter into any contract having relation to said streets, squares, lanes, roads, alleys, gutters, drains, sewers, natural water courses, runs or rivulets, the performance of which shall not be entirely executed and completed and paid for on or before the said first day of July, A. D. one thousand eight hundred and eighty-seven (1887).

Board shall stand in the same position occupied by the council.

Proviso.

(*a*) Shipley Run sewer was a dirty stream of water, and in answer to the contention that it was a natural water course, and private property, for which compensation should be paid, the Court said:

The Chancellor: "Shipley Run is no such water course as the municipal authorities of a large city like Wilmington, may not divert or fill up, if they choose, for the protection of the lives, health and comfort of the inhabitants of the city."

Murphy vs. Wil., 5 Del. Ch. 281 at 292. (yr. 1879)

(*b*) This section (4), beginning with the phrase, "The said directors," &c., is set out in the case of Bullock's Admr. vs. Wil. C. Ry., 5 Penn. 209 at 215. (yr. 1905)

The Water and Police Department Acts are also referred to, and the Court then said:

Nicholson, Ch.: "These acts, taken together, effect the partition of municipal authority in the City of Wilmington." id. 216.

As to the method of condemnation proceedings, see Sec. 116 of the Charter.

(*c*) One of the powers over streets formerly vested in "The Council" was the power to "regulate the use of the streets," and under this power the Court held that the Street and Sewer Department had the

power to pass ordinances regulating the use of fenders on the street cars running in the city.

Nicholson, Ch.: "In the Act of 1883 above cited" (the Charter) the Council was invested with authority "to prescribe and regulate the use of the highways, streets, squares, lanes and alleys of the city, &c. (216) * * If the Council possessed, prior to that act, the power to prescribe the use of a fender, it clearly possessed it as being a reasonable regulation of the manner of using the streets of our city highways, and just as clearly such power was divested by the Act of 1887 creating the Street and Sewer Department, and vested in its Board of Directors."

Bullocks' Admr. vs. Wil. C. Ry., 5 Penn. 209 at 217. (yr. 1905)

Ordinances to remain in force until changed.

SEC. 5. The ordinances, (a) rules and regulations of said city now in force relating to said streets, squares, lanes, roads, alleys, gutters, drains, sewers, natural water courses, runs and rivulets, shall continue in force until the same are changed in whole or part by said board of directors of said department, and the Street Commissioners and all officers and servants of the city engaged and employed on or in connection with the streets and sewers thereof, shall, from the said first day of July, A. D. one thousand eight hundred and eighty-seven (1887), be under and subject to the control of said directors, and the terms of office of the said Street Commissioner and all the said officers and servants are from and after the time last aforesaid, hereby made subject to termination at the pleasure of said directors, and said Street Commissioner, and all such officers and servants shall continue to perform the duties now devolved upon them by the laws and ordinances of said city until the said directors shall otherwise order; and all machinery, tools, buildings, rights, franchises, books, accounts, and other property of whatsoever nature or kind connected with the management of the said streets and sewers shall, after the date last aforesaid, be used and disposed of according to the orders of said directors. The Chief Engineer and Surveyor of the City of Wilmington shall perform the same duties as by any law, ordinance, rule or regulation of said city he is now required to perform. He shall also when required furnish said directors with all plans and specifications for laying out, grading and regulating streets and public ways, and for bridges, culverts, location of inlets, sewers, drains, gutters or other improvements to be made or done under the superintendence of the

Street Commissioner. Term of office.

Chief Engineer and Surveyor shall perform the same duties.

said directors. He shall take charge of all instruments, maps, plans, drawings, records and books relating to the surveys, regulations, grades, culverts, sewers, bridges, wharves and rivers of the city, and all such shall be the property of the City of Wilmington. He shall, when required by said directors, attend their meetings and consult and advise with them or with either of them. (*b*) The said directors shall, during the month of April in each year, prepare estimates of probable expenses of the said street and sewer department over and above its probable revenue for the ensuing fiscal year, which estimates said directors shall lay before Council in May following.

Directors to prepare estimates.

(*a*) To repeal an Ordinance, the Charter requirements must be complied with.

Mayor and Council of Wil. vs. McNabb. (yr. 1906) Munic. Ct. Decision final.

(*b*) If the city has consulted the Chief Engineer before doing work of any kind, and acts on his advice, it has ordinarily done its duty. The city does not have "to take scientific counsel before" it "undertakes to build a sewer," &c., but if it does not do so, and "any mistake be made which might have been avoided by due care in taking advice," &c., "the city would be liable."

Harrigan vs. Wil., 8 Houst. 140 at 144. (yr. 1888)

Huey vs. Richardson, 2 Har. 206. (yr. 1837)

See Magarity vs. Wil., 5 Houst. 530 at 537. (yr. 1879)

See Hession vs. Wil., 1 Marv. 122 at 137. (yr. 1893). This case does not approve of all contained in the Harrigan case. The Magarity and Hession cases lay down the law that our Courts follow. The city is not liable for an exercise of its discretionary powers, such as deciding upon the plan or system of work—the size of sewers, inlets, outlets, the materials to be used, &c. It is liable, however, after it decides as above, for what it does in an unworkmanlike manner, just as an individual would be.

Magarity vs. Wil., 5 Houst. at 536. (yr. 1879)

[The Council shall determine the amount necessary for the use of said street and sewer department, based, as nearly as may be, upon the said estimates. The Council shall in the month of May, A. D. one thousand nine hundred and seven (1907) and in every year thereafter, when determining the amount necessary to be raised on the persons and estates in the City for public use, also include the sum necessary to be raised on the persons and estates for meeting and paying the public expenses estimated and determined by The Council as aforesaid. The amount so determined upon shall be raised and collected and paid into the city treasury as other taxes are raised, collected and paid into said treasury. At the time of making

Council to determine amount necessary for Street and Sewer Department.

Act of March 4, 1907. 24 D. L. 366.

Amount determined upon, how raised.

Council to appropriate for expenses of Department. Proviso:

the annual appropriation for public use, The Council shall also make an appropriation for the expenses of the said street and sewer department equal in amount to that determined in the manner aforesaid by The Council. Provided, that the amount so determined by The Council for the use of said department shall not be less than one hundred thousand dollars

Limit of amount.

($100,000.00) for the current and ordinary expenses of said department for any one fiscal year. (a) The amount of the appropriation for the current expenses of said board of the street and sewer department so made by Council shall be paid

When appropriation available.

in full on or before the first Saturday in August in the year A. D. one thousand nine hundred and seven (1907) and on or before the first Saturday in August in each year thereafter, by the City Treasurer upon an order or orders drawn by the

How drawn.

aforesaid board of directors under the hand of its president. The said directors shall keep or cause to be kept, a full and

Account to be kept.

true account, in suitable books, of all moneys coming into its possession, and received by it, and of all its expenditures according to the provisions of any ordinance of the city now in force or of any rules and regulations hereafter to be passed by said board, and it shall keep or cause to be kept, a full and true account, in suitable books, of all labor performed or materials or supplies furnished.]

(a) This provision gives the Department the revenue with which it must run its affairs. The act also gave it some additional revenue, but the Court decided that the moneys derived from the markets and wharves, and the pole rents belonged to "The Mayor and Council," and not the Department.

Lore, C. J.: "This was a case stated, the point at issue being, whether the Board of Directors of the Street and Sewer Department were entitled to have, receive and dispose of the fees and charges collected from farmers, traders, dealers and hucksters using the street markets in said city, or whether such fees and charges ought to be paid over to "The Mayor and Council of Wilmington" for the general fund and uses of said city. There was also a second suit brought by the same plaintiff against Isaac C. Pyle, City Auditor for the City of Wilmington * * concerning the taxes on electric light poles, * * also a third suit * * in regard to the rents collected from lessees of wharves along the river front at the ends of streets owned by the said City of Wilmington. * * Judgment was rendered in favor of the defendant in each case,"—i. e., against the Street and Sewer Department. This decision gives the money to the Council, for the use of the city.

Street and Sewer Department vs. Connell, 2 Penn. 571 at 572. (yr. 1900)

Employment of officers.

SEC. 6. The directors of said Street and Sewer Department shall, at their discretion appoint, employ and discharge

all officers, agents, ministers and servants necessary for the management and services of the duties imposed upon said directors by this Act or by any laws, ordinances, rules or regulations appertaining to or affecting said duties; they shall determine the compensation to be paid to each one so employed and shall make all the needful rules (*a*) and regulations to govern their own deliberations and for the observance of the officers, agents, ministers and servants by them employed, and shall determine the penalty and condition of the bond or bonds of such officers, agents, ministers and servants as are required by said directors to give bond.' Other powers.

(*a*) As to the legal meaning of the word "rules," see Sec. 76, "a" of the Charter.

Sec. 7. The said directors shall immediately after their organization resolve upon what in their judgment is the best plan for giving the citizens of Wilmington the most improved system of streets and sewers, and to this end may acquire by contract or otherwise all such real and personal estate as said directors shall deem necessary, the title to any such real and personal estate to be vested in The Mayor and Council of Wilmington. Any sewer or sewerage system, drain or culvert, which said directors may deem injurious to the best interest of the city, or inconsistent with the plan of said department for a sewerage system for said city, or which said directors may believe should be controlled by the city through said department, may, after the said first day of July, A. D. one thousand eight hundred and eighty-seven (1887), be condemned in the same manner as land is now condemned for street purposes, (*a*) except that said directors shall in such condemnation proceedings act, instead of and be substituted for "The Council" of said city; and the same laws, ordinances, rules and regulations which now govern said Council in such proceedings shall, after the time last aforesaid, apply to and govern said directors. After any sewer or sewerage system, drain or culvert has been condemned, (*b*) as aforesaid, said department may use or discontinue the same or make such other disposal thereof as in the judgment of its directors seem best. When a sewerage system for said city has been resolved upon, said department may fix rates, which those who connect their properties therewith

May acquire real and personal estate.

Sewerage system.

Condemnation.

Sewerage rates.

shall be required to pay and said department may collect the same; it shall account to "The Council" for moneys thus received in the same manner as it is hereafter required to account for other moneys received and expended.(c)

(a) See Secs. 116 and 117 of the Charter.

(b) The city may condemn, and close up, a filthy stream of water (practically a sewer) such as was Shipley Run, without compensation. See Sec. 4, "a" of this act.

(c) See Sec. 71 of the Charter.

Contract for materials.

SEC. 8. The doing of all work and the furnishing of all materials and supplies required by said Street and Sewer Department shall be let out by the directors of said department to the lowest and best bidder, (a) except in cases where, in the opinion of said directors, it is not practicable to do such work or furnish such materials and supplies by contract. Notice that the department will receive proposals for such work, materials or supplies shall in all cases be published at least five times in each of two daily papers of the City of Wilmington, the last publication to be at least three days before the opening of the bids. Such notice shall state the kind and amount of the work to be done or furnished, the place where and the period within which the bids will be received. Each bid must be signed by the bidder and be accompanied by an undertaking signed by the persons offered by the bidder as his sureties, who must in all cases be resident freeholders of New Castle County, declaring their consent to be such sureties in the event of the contract being awarded to such bidder; and if any contract be so awarded and such bidder shall fail to complete the execution of a contract therefor, with security for its performance, approved by the said department, such bidder and the party or parties so undertaking for him as aforesaid shall be liable to pay to the City of Wilmington any damage that may be occasioned to said city by such failure.

Publication for bids.

Bids to be signed by bidder.

(a) Under an ordinance passed in 1862, relating to street paving (Ch. Ls. & Ords 1885, p. 327) which required contracts to be let to the "lowest bidder," the Court held, if the advertisement reserved the right "to reject any or all bids," it was a valid clause, and it could reject said bids and re-advertise; and it also could "have preferred a higher bid under the original advertisement."

Keogh vs. Wil., 4 Del. Ch. 491 at 498-9. (yr. 1872)

The bidder, in view of said clause, practically said: "I propose to

do the work for so much, *provided* you * * give me the job.'' id. 499.

And without said clause, ''to reject any or all bids,'' &c., the Council has the right to reject all bids, ''alter the plan * * change or amend the specifications and issue new ones.'' id. 497.

The Chancellor: ''The question whether the ordinance has been strictly followed, is one between the Council and its officer or committee, and does not concern the bidder. His acquiescence in the reserved right, by bidding subject to it, concludes him. * * (499). where no private right is infringed, and the city corporation or its officers are exercising their discretion in good faith, the Court will not revise the grounds of their proceedings nor entertain the suggestion that their action is inexpedient for the public interest.'' id. 500.

The above decision was based on an ordinance; the above section is part of a statute.

Duties of City Auditor.

SEC. 9. The City Auditor shall examine all bills against said department and endorse them as correct before they are presented to said department for payment; he shall also examine and countersign all drafts or orders and withhold his signature in case the draft or order is made without sanction of law, or with any circumstances of fraud actually or presumably attached thereto, in all of which cases he shall report his action and the grounds therefor to the directors of said department at their ensuing meeting; said directors shall thereupon duly, carefully and publicly consider the case and shall sustain or overrule his action by a unanimous vote of all the members of said board of directors, whereupon it shall be the duty of the City Auditor in case he shall be overruled to countersign the said draft or order, in which case he shall be exonerated from all responsibility in the premises. He shall also keep a book or books in which an exact and complete record of all accounts so paid shall be entered, keeping a debtor and a credit account with all persons doing work for or furnishing materials to the said department in any manner.

Director shall not apply to his own use any money coming into his hands.

Penalty.

SEC. 10. If any of said directors of said department, or any officers thereof, shall at any time apply to his own use any of the money which may come to his hands or under his control, by virtue of this Act, the person so offending and his sureties shall forfeit and pay to the City of Wilmington a sum of money which shall be two-fold greater than the sum of money so applied to the use of the offender, to be recovered by action on his official bond or otherwise, as the case

may be; *provided*, nothing herein contained shall be considered a bar to any criminal proceeding for the same offense.

Money to be deposited.

See 18 D. L. 26 and 18 D. L. 895.

How drawn.

SEC. 11. The moneys and revenue received by the Street and Sewer Department shall be deposited to the credit of said department in such bank in Wilmington [as it shall determine upon], and all money to be disbursed therefrom on account of the duties and obligations by this Act imposed, and[1] shall be drawn upon warrants signed by the President of the Board of Directors of said Department and countersigned by the City Treasurer and City Auditor. "The Council" of the City of Wilmington shall at its first meeting in May, in the year A. D. one thousand eight hundred and eighty-eight (1888), and annually in the month of May thereafter, appoint from among its members, a committee of three whose duty it shall be to examine and audit the accounts of the said Street and Sewer Department, and if correct, attest the same. The said department shall submit to said committee an itemized statement of its receipts, disbursements and expenses for the year immediately preceding, together with its books of account, vouchers, &c., and all other data necessary to enable said committee to properly audit said accounts. The said committee shall within two weeks report its finding to "The Council" aforesaid, and the said itemized statement shall immediately thereafter be [printed in pamphlet form.]

Council shall annually appoint a committee to examine and audit accounts.

Statement of receipts. To whom submitted.

Committee shall report to the Council.

Act of April 19, 1889. 18 D. L. 883.

Duty of City Auditor.

Act of April 29, 1891. 19 D. L. 411.

[It shall be the duty of the City Auditor, during the first week of every month, to examine and audit the accounts of the said Street and Sewer Department for the month last preceding; and he shall make duplicate certificates, showing the result of such examination and audit, one of which he shall deliver to the said Board of Directors of the Street and Sewer Department and the other shall be by him transmitted to "The Council."]

Directors shall give bond.

SEC. 12. Each of the directors of said Street and Sewer Department shall, immediately after organization, (*a*) enter

1. So enrolled.

into a bond with sureties to The Mayor and Council of Wilmington in the sum of thirty thousand dollars, said sureties to be approved of by the "City Judge," the condition of which bond shall be as follows, viz: The condition of this obligation is such that if the above bounden one of the directors of the Street and Sewer Department, shall in all things comply with the provisions of this Act, and shall faithfully execute the trust confided to him, then the above obligation to be void, otherwise to remain in full force and virtue. To the said bond there shall be subjoined a warrant of attorney to confess judgment thereon, and the said bond and warrant shall be filed in the office of the City Treasurer, there to remain until in the judgment of the "City Judge" the interest of the city demands that it be entered in the Superior Court of the State of Delaware in and for New Castle County.

Form of condition.

(*a*) This wording "immediately *after* organization," is odd. Practically, all the officials required to bond, do so *before* they take office.

SEC. 13. All Acts or parts of Acts inconsistent herewith are hereby repealed.

Inconsistent acts repealed

Passed at Dover, April 20, 1887.

CHAPTER VIII.

ACTS IN RELATION TO SEWERS AND DRAINAGE.

	Page		Page
1. Act Authorizing the Street and Sewer Department to Construct Certain Sewers..	238	4. Act Authorizing the Street and Sewer Department to Satisfy Certain Paving and Curbing Liens	246
2. Act Authorizing the Street and Sewer Department to Establish Rules for Drain Layers	244	5. Act Authorizing the Street and Sewer Department to Lay a Sewer at Third and Webb Streets	247
3. Act Authorizing the Street and Sewer Department to Build and Also Condemn Sewers Within One Mile of the City Limits.....	245		

19 D. L. 413. *AN ACT pertaining to a System of Sewers for the City of Wilmington.*

Preamble. WHEREAS it is apparent that the City of Wilmington stands in great need of a thorough system of sewers that will be extended over the entire city, providing not only for the present but for the future.

WHEREAS a proper regard for the health of the inhabitants of the city, as well as their property and business interests, require that this work be speedily undertaken.

WHEREAS a plan of a well-defined system has been prepared under the direction of the Board of Directors of the Street and Sewer Department, and an approximate estimate of the cost of building the same has been duly made; now therefore, (*a*)

(*a*) The recital part of this Act is set out, verbatim, in the case of English vs. Wil., 2 Marv. 63 at 86-7. (yr. 1894)

SECTION 1. That the Mayor and Council of Wilmington, through the agency of the Board of Directors of the Street

and Sewer Department of the City of Wilmington, (a) is hereby authorized and empowered to construct such sewers in accordance with any plan (b) now or that may hereafter from time to time be adopted, as may seem to them necessary to meet with the requirements of the city, and the cost of constructing such sewers shall be met in the following manner.

Street and Sewer Department authorized to construct sewers.

(a) *Nicholson, Ch.*: This Act "does not conflict either with the provisions of the Constitution of the State of Delaware, or with the Fourteenth Amendment of the Constitution of the United States, and is in all respects constitutional."
English vs. Wil., 2 Marv. 63 at 97. (yr. 1894)

(b) The kind, size, plan, location, &c., of sewers, and the time of the building of the same, are purely judicial matters, and for errors of judgment regarding the same the city is not liable in damages, but the city is liable for the imperfect and unworkmanlike manner in which the work is actually done.
Magarity vs. Wil., 5 Houst. 530 at 535-7. (yr. 1879)
Hession vs. Wil., 1 Marv. 122 at 137. (yr. 1893)
Comegys, C. J.: The city officials "are not liable for any error of judgment merely in deciding upon a plan of improvement; nor is the city."
Harrigan vs. Wil., 8 Houst. 140 at 143. (yr. 1888)
Huey vs. Richardson, 2 Har. 206. (yr. 1837)

Manner of paying cost of sewers.

SEC. 2. The said Board of Directors of the Street and Sewer Department, from the approximate estimate of the whole cost of constructing any sewer in accordance with any plan now or that may hereafter from time to time be adopted, shall apportion the said cost to each lineal foot of sewer to be built in accordance with the aforesaid system, said cost to be apportioned alike upon each and every size of sewer, be it a lateral or trunk sewer; two-fifths of said cost per lineal foot shall be paid for by the aforesaid board of directors out of their annual appropriation for streets and sewers, the remaining three-fifths of the said cost per lineal foot shall be paid for by the abutting property upon the streets or highways in which said sewers are constructed at the time of completing each sewer, and the aforesaid property shall be assessed for said costs per lineal foot as follows:

Apportionment of cost.

Assessments. How made.

SEC. 3. (a) All assessments (b) shall be made upon the properties abutting upon that portion of any street or highway, lane or alley, in which any public sewer may be constructed under this provision, at the rate of fifty cents for each front foot of such property upon such street, highway, lane or alley, and one

cent for each square foot of such property between such street, highway, lane or alley, and a line not exceeding one hundred and fifty feet distant from and parallel with the line of such street, highway, lane or alley; *provided, however*, that where any property is situated between two streets or highways, the area upon which said assessment of one cent per square foot is made shall not extend to more than one-half the distance between such streets or highways; *and provided also*, that when any property is situated at the corner of two streets or highways, or otherwise so situated as to be assessed for the expenses of building a sewer on one of such streets or highways, [only the front of such property, together with the area, shall be liable for such assessment, and the whole assessment shall be made on the completion of any portion of a sewer, either in front or on the side of such property, so as to make the said property accessible to such sewer; *and provided further*, that the said Board of Directors of the Street and Sewer Department shall determine, in all cases, what portion of a property shall be considered as side frontage, unless said property has been divided into building lots and a plot thereof filed in the city engineering and surveying department, or published, or both, then in such case the side frontage shall be determined by such plan; *provided further, however*, that should the owner or owners of such corner property decide, after the above assessments are made or paid, to make the side of such property, as determined by the said board, the frontage of such property, then in such case the owner or owners of such corner property, shall pay such additional sum of money as the said board of directors may determine upon, in accordance with the provisions of the aforesaid Act]; *provided, however*, that said side frontage is one hundred and fifty feet or less; *and provided also*, that no property or portion of property shall be assessed for the construction of any sewer, unless such property or some portion thereof shall abut and be bounded upon the street on which said sewer shall have been constructed, or unless such property or a portion thereof has a right of access to said street or highway by a private alley, or desires to use said sewer before a sewer is constructed upon the street or highway upon which said property abuts, in

Proviso.

Corner lots.

Act of April 26, 1893.

Proviso.

Proviso.

Proviso.

which case the said property shall be liable for the same assessment as though the sewer was constructed in the streets or highways upon which said property abuts, and the said property shall not be liable for any further assessment for sewer purposes.

(*a*) This section is set out verbatim in the case below cited, and the Court decided:

1st. That an assessment of .50 per front foot, and .01 per square foot ascertained from an estimated cost of a sewer system for the entire city, was valid. (at 87-88)

2nd. That the fixing of the amounts by the Legislature was valid. (86)

3rd. That it was not necessary to give notice to the abutting property owner before the assessment was made, as it was simply a matter of *multiplication*, and no good could come of giving notice. If the assessment had been based on the basis of *benefits*, then notice would have been necessary.

English vs. Wil., 2 Marv. 63 at 90. (yr. 1894)

(*b*) These assessments are valid.

Murphy et al vs. Wil. 6 Houst. 108 at 133. (yr. 1880)

All requirements should be strictly complied with or the assessment will be void. id. 136.

Rights of owners of lands assessed for sewer.

SEC. 4. When any such assessment shall be made upon any land for the expense of constructing any such sewer, the owner so assessed shall have the right to connect such land with such sewer, under and subject to such rules and regulations as the Board of Directors of the Street and Sewer Department shall from time to time prescribe, upon executing to said board a release of all damages which may at any time happen to such property in any way resulting from such connection.

Lien of assessments.

SEC. 5. All assessments made under authority of this Act shall be a lien (*a*) upon the property upon which they are made from the date upon which they are certified by the Board of Directors of the Street and Sewer Department to the clerk of said board for collection, and such lien shall have priority against any lien, incumbrance or conveyance made or suffered by the owner or owners of such property after the date of the certifying of such assessment as aforesaid. And any such assessment shall be due and payable upon the date of the certifying as aforesaid, and if paid within [sixty] days after the date of the presentation of the bill of such assessment a discount of five per cent. will be al-

When assessment falls due.

Act of April 26, 1893.

Discount.

Act of April 26, 1893.

lowed on the face of the bill so presented; [and upon all assessments paid after sixty days, and on or before ninety days after presentation of the bill, the face of the bill will be payable; and] upon all assessments not paid within [ninety] days after the date of the presentation of the bill as aforesaid, interest, at the rate of six per centum per annum, may be charged from [ninety days after] the date of the certifying of such assessment as aforesaid until the same is paid in full. If, however, any such assessment or part of such assessment shall remain unpaid at the end of one year after the date of the certifying as aforesaid, it shall be the duty of the Mayor of the city to issue his warrant, directed to the said Board of Directors of the Street and Sewer Department, commanding them to levy the same with the interest thereon accrued, and all costs thereon, upon the grounds or buildings of such owner abutting on any such streets or highways aforesaid, which such grounds or buildings or any part thereof shall be sold by the said board at public auction (*b*) after ten days' notice in two newspapers published in said city, and a deed from The Mayor and Council of Wilmington shall convey to the purchaser of such grounds or buildings as full and complete a title to said premises, in fee simple or otherwise, as if the same were executed by said owner thereof. And it shall be the duty of said board of directors, out of the purchase money of the said premises so sold as aforesaid, to pay all costs arising from said process and sale to the parties entitled thereto respectively and to retain the amount of such assessment with accrued interest thereon as aforesaid. The residue of said purchase money shall be immediately deposited by the said board of directors in the Security Trust and Safe Deposit Company of Wilmington, Delaware, to the credit of the owner of the property so sold.

Failure for a year to pay assessment.

Levying on property.

Sale.

Notice of sale.

Deed.

Application of money.

(*a*) This lien clings to the land, whoever may be the owner.

If an assessment be made for a sewer lien in the name of a deceased person (who was once the owner of the property) or his heirs, and the same be sold by the city, and when sold, it was owned by other persons, this will not vitiate the sale, for,

Wales, J.: The "lands were liable for the payment thereof whoever might be the holder and the owner of the same," and this, especially so if the city official had no notice of the change or transfer, and the record did not show such change or transfer.

Murphy vs. Wil., 5 Del. Ch. 281 at 293. (yr. 1879)

(*b*) If the Department has decided to sell as above, the tax or assessment should be paid under protest, and an action be brought to recover back the money, for the Court of Chancery is not inclined to restrain the city in its action.

Wales, J.: "The owner of personal or real property, seized and sold under execution for the collection of an illegal municipal tax, has an adequate remedy at law, either by paying under protest the amount demanded, and bringing an action against the city to recover it back, or by an action of trespass for the recovery of damages. * * A writ of certiorari will afford the owner of property, subject to an illegal assessment, another mode of redress or relief."

Murphy et al vs. Wil., 6 Houst. 108 at 138. (yr. 1880)

Saulsbury, Ch.: Equity will not "become a supervisor in respect to the compliance or non-compliance with all the ordinances of a great city, by its officers in the administration of the multifarious affairs of the city."

Same case, 5 Del. Ch. 281 at 293. (yr. 1879)

Neary vs. P., W. & B. R. R. Co., 7 Houst. 419 at 426. (yr. 1887)

P., W. & B. R. R. Co. vs. Neary, 5 Del. Ch. 600 at 610. (yr. 1886)

E. G. & T. Co. vs. Donahoe, 8 Del. Ch. 422 at 427-8. (yr. 1899)

Abutting property. How assessed.

SEC. 6. That properties abutting upon a street or highway, lane or alley wherein a public sewer has been constructed previous to the passage of this Act, shall pay to the said Board of Directors of the Street and Sewer Department the same amount for sewer benefits as is herein provided for; *provided, however,* that no assessment shall be made upon such property until a permit is granted by the said board for the said property to make connection with said sewer, whereupon the whole assessment shall be due and payable before any such connection is made.

Proviso.

Act of April 26, 1893.

Land abutting navigable streams exempt.

[*And be it further provided,* that all properties, or portions of properties abutting upon any navigable stream within the city, and lying between said stream and the first street, highway, lane or alley, lying back from and in or near unto the same direction with the said stream, shall not be liable for any sewer assessment whatever, unless said property, or any portion thereof, desires the use of public sewer, in which case said property shall be liable for the same assessments as herein before provided.]

Rules and regulations to be adopted by board.

SEC. 7. The Board of Directors of the Street and Sewer Department are hereby authorized and empowered to pass and adopt such rules (*a*) and regulations as the said board may see proper for regulating, controlling and prescribing the

manner in which any sewer or drain constructed by order of or in charge of said board shall be used, and the manner in which connections therewith, or with any private sewer now existing or hereafter to be constructed in any public street, lane or alley in the city, any house, building, yard or other place, shall be made, and for the keeping of the same in proper repair, and shall prescribe certain fines and penalties for the non-observance of such rules and regulations, said fines to be collected in the same manner that other fines for offences against the ordinances of the city are now or may hereafter be collected.

(*a*) As to the legal meaning of the world "rules," see Sec. 76, "a" of the Charter.

SEC. 8. That all Acts or parts of Acts inconsistent with this Act are hereby repealed.

Passed at Dover, April 29, 1891.

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19 D. L. 434. *AN ACT in relation to Sewers and Drains.*

Rules and regulations concerning drain layers.

SECTION 1. That the "Mayor and Council of Wilmington," through the agency of the Street and Sewer Department, shall have power to establish rules (*a*) and regulations for the proper government of all persons or corporations who may be engaged in the laying, repairing and making any connections with any public or private sewers, drains, drain pipes, water or steam pipes, in that portion of the City of Wilmington under the jurisdiction and control of the said Street and Sewer Department, and may provide a system of

Licenses.

licenses for, as well as proper bonds of indemnity from all such persons or corporations, which bonds of indemnity (*b*) shall be with surety or sureties, and in such amount and with such conditions as said Street and Sewer Department may determine; and the said Street and Sewer Department may

Penalties.

prescribe penalties for breaches of such rules and regula-

Proviso.

tions; *provided, however*, that no penalty shall be in excess of fifty dollars.

(*a*) As to the meaning of the word "rules," see Sec. 76, "a" of the Charter.

(*b*) The city should always take bonds of indemnity, for it is liable

for the negligent acts of plumbers who open streets by virtue of licenses issued to them by the various Departments.

Comegys, C. J.: The city "oftentimes authorizes, by license, parties not in its employ to do certain things; * * as to open the public streets * * and to connect house drains * * with the public mains in the street, taking from them * * indemnity to protect the city from suits."

Anderson vs. Wil., 8 Houst. 516 at 526. (yr. 1889)

"But that does not relieve it as to the citizen of such public duty." The city should "see to the work the same as if it were being done by its own agents," &c. id. 527.

Rules and regulations to be printed, etc.

SEC. 2. Such rules (*a*) and regulations as shall be adopted in conformity with the provisions of this Act shall be printed and kept in the office of the Street and Sewer Department for distribution to persons or corporations that may make application to connect with, lay or repair any public or private sewer, drain or drain pipe, water or steam pipe as aforesaid.

(*a*) As to the meaning of the word "rules," see Sec. 76, "a" of the Charter.

SEC. 3. * * * * * * * * * *

SEC. 4. * * * * * * * * * *

Passed at Dover, May 15, 1891.

AN ACT to authorize the Mayor and Council of Wilmington, acting through the Board of Directors of the Street and Sewer Department, to take by condemnation the right to build sewers or lay sewer pipes or to acquire the right to use such pipes already laid, or to use certain water courses of lands outside of the said City and within one mile thereof.

20 D. L. 680.

May build or acquire sewers within one mile of city.

SECTION 1. That the Mayor and Council of Wilmington, acting through the Board of Directors of the Street and Sewer Department, be and it is hereby authorized and empowered to build sewer or sewers and to acquire the right to use such sewer or sewers already built outside the limits of said city and within one mile thereof, as the public interests, in their judgment, require. *And further*, to acquire and take such small streams and water courses, (*a*) and the beds thereof, within the distance aforesaid outside the limits of the said city, as

Use of small streams.

the public interests may require; *provided,* that such small streams or water courses shall be drained into sewers by it to be constructed, and that the authority for taking any such under the provisions of this act shall not be construed to authorize the taking of any streams or water rights, or the condemnation thereof, where the same are now used by or for the benefit of manufacturing establishments in or near said city, or for producing power therefor; and if the said board of directors shall be unable amicably to agree with the owner or owners thereof, or of the land through which the same shall pass or may need to be constructed, the damages to such land owners or to the owners thereof shall be assessed in the same manner as damages are now assessed where land is condemned for opening, widening or laying out streets in the said city (*b*) and all sums which shall be agreed upon or assessed as damages in such cases shall be paid out of the funds provided for the purpose of building sewers.

Damages to land owners.

How assessed.

How paid.

Passed at Dover, May 13, 1897.

(*a*) As to "water courses," and the city's right to take same, &c., see the case of,

Murphy et al vs. Wil., 6 Houst. 108 at 129. (yr. 1880), and 5 Del. Ch. 281 at 291-2. (yr. 1879)

(*b*) See Sec. 116 of the Charter.

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20 D. L. 155.

AN ACT in relation to the Liens entered against Property for curbing and paving Sidewalks or Streets and the construction of Sewers.

* * * * * * * * * * *

Lien for paving to be satisfied upon production of evidence of payment.

SECTION 1. That the board of directors of the Street and Sewer Department of the City of Wilmington, or their successors, shall by resolution from time to time, as occasion may require, cancel and satisfy of record at any meeting of said board of directors, any and all liens entered against abutting property for the paving or curbing of any footway, sidewalk or street, as well as liens entered for the construction of any public sewer or drain, upon the presentation by the owners or agents of any property liened for purposes aforesaid, of evidence of previous payment to the proper municipal authorities of the City of Wilmington for the whole number of feet con-

tained in the street line of the property of such owners respectively, of any curbing or paving in front or alongside of, or the drainage from said property.

Lien may be satisfied without evidence of payment where property drained into a public sewer prior to lien.

SEC. 2. Upon the absence of evidence of any previous payment for liens as aforesaid, the said board of directors are hereby authorized, in their discretion, to cancel and satisfy of record, any and all liens entered subsequent to the passage of the Sewer Lien Law, April 29th, A. D. 1891, against abutting property, where the property so liened has been and is draining into a public sewer previous to and at the time of the entry of the lien, as aforesaid; *provided, however,* that it shall not be lawful to cancel any sewer assessment or lien made or entered against unimproved land (without buildings or building) abutting a natural water course used for sewage (excepting a natural stream), unless such cancellation be by payment in the usual manner made and provided.

Not to apply to unimproved land.

Doings of Directors of Street and Sewer Department made valid.

SEC. 3. That all the public acts and doings of the board of directors of the Street and Sewer Department of Wilmington, so far as the same applies to the cancellation of any account liened (under the jurisdiction or control of said department) shall be and the same are hereby confirmed, established and declared to be valid and effectual.

SEC. 4. That this act shall repeal all laws or parts of same so far as they may be inconsistent therewith.

Passed at Dover, March 26, 1895.

AN ACT to protect the Health of the Citizens of Wilmington. 20 D. L. 660.

Sewer.

SECTION 1. The Mayor and Council of Wilmington is hereby authorized, directed and required, within one year after the passage of this act, through the agency of the Board of Directors of the Street and Sewer Department for the said city, to lay and construct a sewer drain pipe of the diameter of not less than twelve inches, beginning at the intersection of Third and Webb streets in the said city and running thence southerly with the said Webb street to its intersection with Lancaster avenue, and thence by such course as the said board

Location.

Powers.

may deem most expedient to the Christiana river; and also to acquire by purchase or condemnation the lands, waters and water rights necessary for laying and constructing the said sewer drain pipe.

Condemnation of land.

SEC. 2. In case the said board of directors shall not be able to agree with the owners of said property for the purchase thereof, the said board shall cause the same, whether within or without the bounds of the said city, to be condemned for the use of the said city for the purpose aforesaid in like manner and by like proceedings as are now provided by law for the condemnation of land for extending, widening, laying out or opening streets within said city. (*a*)

(*a*) See Sec. 116 of the Charter.

Expenses, how paid.

SEC. 3. The cost, expenses and damages which may be incurred in the purchase or condemnation of said property and in laying, constructing and maintaining said sewer drain pipe shall be raised, collected and paid in the same manner as now provided by law for the cost and expenses of opening and maintaining public drains or sewers within the said city. *Provided, however,* that no costs or charges shall be laid or levied upon owners of abutting property for the construction of said sewer, unless it shall be actually used for drainage purposes by said owners; *and provided further,* that the Jessup and Moore Paper Company and the Ford Morocco Company shall each pay the sum of four thousand dollars towards the construction of the said sewer, which said sum of eight thousand dollars shall be paid within thirty days after the work of the construction of the said sewer shall be commenced; *and provided further,* that the total cost of the construction of the said sewer shall not exceed the sum of thirty-two thousand dollars.

Proviso.

Jessup and Moore Paper Co. and Ford Morocco Co. to pay certain sums.

Total cost.

Taxes to be collected.

SEC. 4. The council of the said city shall cause to be raised by taxation or otherwise, and paid to the said street and sewer department, such amount as may be necessary for the purposes of this act.

Passed at Dover, January 18, 1897.

CHAPTER IX.

ACTS IN RELATION TO STREETS AND ROADS.

		Page
1.	Act Providing for the Establishment of Streets and Grades on Lands Contiguous to the City...	250
2.	Act to Regulate the Laying Out of Streets and Roads Within a Half Mile of Wilmington	253
3.	Act Relating to the Opening of Streets to Lay Pipes	254
4.	Act in Relation to Gilpin Avenue	255
5.	Act to Make a Public Road of a Portion of Wilmington Turnpike	256
6.	Act to Allow Part of Spruce Street to Remain Unopened	257
7.	Act Altering the Direction and Vacating Portions of Certain Streets in Ninth Ward	257
8.	Act Creating Robinson Street	262
9.	Marsh Road Changed to "Vandever Avenue"	262
10.	Act In Relation to D Street	262
11.	Act to Authorize the Further Extension of Monroe Street	263
12.	Act to Prohibit the Extension of Part of West Street	263
13.	Act Vacating Love Lane.	264
14.	Act Vacating Parts of Certain Streets	264
15.	Act Vacating Part of Water Street	264
16.	Act Vacating Part of Madison Street	264
17.	Act Vacating Part of Tenth Street	264
18.	Act Vacating Part of Dock Street	264
19.	Act Vacating Part of Washington Street	264
20.	Act Vacating Fifteenth Street	264
21.	Act Vacating Part of Orange Street	264
22.	Act Vacating Part of Fifteenth Street	265
23.	Act Vacating Part of Marsh Road	265
24.	Act Vacating Part of Fifth Street	265
25.	Act Vacating King's Road	265
26.	Act Vacating Part of Kennett Turnpike Road..	265
27.	Act Vacating Parts of Certain Streets	265
28.	Act Vacating Part of Water Street	265
29.	Act Vacating Wilmington and Christiana Turnpike Road	265
30.	Act Vacating Part of Sixteenth Street	266
31.	Act Vacating Part of Twelfth Street	266
32.	Act Vacating Part of Reed Street	266
33.	Act Vacating Part of Reed Street	266
34.	Act Vacating Part of Dock Street	266
35.	Act to Vacate Part of West Dock Street	267
36.	Act Vacating Part of "G" Street	267
37.	Act Vacating Parts of King, French and Walnut Streets	267
38.	Act Vacating a Portion of Riddle's Road	268

	Page		Page
39. Act Vacating Part of Buttonwood Street	269	Road	270
40. Act to Vacate Brobson's Lane	269	42. Act Vacating Part of Hawley Street	270
41. Act to Vacate Rockford		43. Act to Vacate Certain Roads and Streets.....	271

19 D. L. 408. *AN ACT to provide for the establishment of Streets and Grades on lands contiguous to the City of Wilmington.*

Owners of lands contiguous to Wilmington allowed to lay out streets, grades, etc.

SECTION 1. That it shall be lawful for the owner or owners of any tract of land lying immediately contiguous to the boundary line of the City of Wilmington, as now or hereafter established by law, to lay out such lands in blocks and building lots, with streets conforming to the streets of the City of Wilmington, so far as the extension of such streets beyond the city line would pass through such tract of land; and the owner or owners of such land may fix the grade of such streets, and the grade so fixed, when approved as hereinafter provided, shall be binding upon all persons thereafter becoming purchasers of lots abutting on such streets.(*a*) It shall be the duty

How laid out.

of any owner or owners, so laying out a tract of land as aforesaid, to make or cause to be made a plot of the same, designating the blocks by letters or numbers, and the lots in each block by numbers, and designating thereon the size of each lot and the width and grades of each street, and such plot when completed, shall be submitted to the Board of Directors of the Street and Sewer Department of the City of Wilmington, for

Approval of plot.

the approval of said board. Upon the approval of said plot by the said board, and the endorsement of such approval thereon, and the further endorsement of an acknowledgment as hereinafter provided, a copy thereof shall be lodged in the office of

Plot, where lodged.

the Recorder of Deeds (*b*) in and for New Castle County, and one copy thereof in the office of the Chief Engineer of the City of Wilmington.

(*a*) When persons build they must take notice of grades of streets. *Cullen, J.*: "If, however, you are satisfied from the proof offered, that the injury sustained was such as was necessarily incident to plaintiff's property by reason of its location when the streets and sidewalks should be brought to the grade *then existing,* when he purchased this house, of which he was bound to take notice," then he could not recover.

Benson vs. Wil., 9 Houst. 359 at 364. (yr. 1893)
Clark vs. Wil., 5 Har. 243 (yr. 1849)

(*b*) See Sec. 3, "a" of this act.

Plots, of what made, etc.

SEC. 2. The copies of the plot or plots herein authorized to be made shall be upon the best and most durable material used for such purposes, and each shall have written upon it as an original the approval of the said Board of Directors of the Street and Sewer Department and the acknowledgment by the owner or owners before any officer authorized under the laws of this State to take the acknowledgment of deeds. Such acknowledgment may be substantially in the following form:

State of ————, ———— County, ss.

Acknowledgment by owners of land.

Be it remembered that on this ——— day of ——— A. D. 19—, personally came before me, A. B., notary public for the State of Delaware (or title of officer taking acknowledgment), C. D. and E. F., owners of the land designated on this plot, and severally acknowledged this plot to be their deed, and that they have dedicated such streets, lanes and alleys as are thereon laid out to public use as highways, and have designated the tract of land hereon indicated by the name of (designation of land).

Given under my hand and seal of office the day and year aforesaid.

Effect of acknowledgment.

The making of such acknowledgment by a married woman, being the wife of any owner, with a private examination in the usual form, shall operate as a relinquishment of dower in the land occupied by said streets, lanes and alleys. In the case of a corporation the acknowledgment shall be adapted to the form prescribed by law for acknowledgment of deeds by a corporation.

Effect of filing of plots.

SEC. 3. The filing of said plots in the office of the Recorder of Deeds, as aforesaid, shall operate as a dedication (*a*) for public use as highways, by such owner or owners, of all lands designated on said plot as streets, lanes or alleys; and if at any time hereafter the said tracts of land shall be duly incorporated in the City of Wilmington by the extension (*b*) of the boundaries of said city, all such streets, lanes or alleys shall become streets, lanes or alleys of the City of Wilmington, and subject to all laws and ordinances relating thereto, and all

grades established under this Act shall remain in force until changed under the laws or ordinances of the City of Wilmington.

(*a*) The formality above mentioned is not necessary to constitute a dedication.

Gilpin, C. J.: " * it may be done without any formality whatever, and may be made with or without any writing, by any act of the owner, such as laying out a road upon it and throwing it open to public travel, or by platting and selling lots bounded by streets designated on the plat, thereby indicating a clear intention to dedicate such roads or streets to the use of the public as common highways."

Ogle vs. P., W. & B. R. R. Co., 3 Houst. 267 at 272. (yr. 1866)

Poole vs. Greer, 6 Penn. 220 at 221. (yr. 1907); State vs. Southard, 6 Penn. 247 at 250. (yr. 1907); State vs. Reybold, 5 Har. 484 at 486. (yr. 1854); Johnson vs. Stayton, 5 Har. 448 at 449-50. (yr. 1854); Fulton vs. Dover, 8 Houst. 78 at 84 and 110-111. (yr. 1888)

(*b*) As to the effect of an *extension* of boundaries upon land dedicated, and that, in such case, condemnation proceedings are unnecessary, see the case of

Fulton vs. Dover, 6 Del. Ch. 1 at 14. (yr. 1886)

Recording of plots.

SEC. 4. It shall be the duty of the Recorder of Deeds to cause to be recorded all plots filed under the provisions of this Act, in a book or books to be procured by him for that purpose, and to be paid for as other record books are paid for; and he shall receive for filing and recording any such plot the sum of five dollars, together with any expense actually and necessarily incurred by him for recording the same.

Fee for recording.

Plots evidence.

The original of any such plot, or the record thereof, or a duly certified copy thereof, shall be evidence as in the case of deeds.

Service of city engineer, how paid for.

SEC. 5. If in any case the said Board of Directors of the Street and Sewer Department shall require for their information any service from the city engineer of said city, or any of his assistants, such service shall be paid for by the owner or owners of the property at such price as shall be fixed by the said Board of Directors of the Street and Sewer Department.

Public act.

SEC. 6. This Act shall be deemed and taken to be a public Act.

Passed at Dover, April 29, 1891.

[1]*AN ACT to regulate the laying out of Streets and Roads on lands within one-half mile of the limits of the City of Wilmington.*

20 D. L. 267. (Appendix)

Charter of Wilmington amended.

SECTION 1. That the provisions of an act entitled "An act to provide for the establishment of streets and grades on land contiguous to the city of Wilmington," passed at Dover, April 29, 1891, Chapter 205, Vol. 19, Laws of Delaware, be and the same are hereby extended and made applicable to any and all tracts of land lying outside the boundary line of the city of Wilmington, as now or hereafter extended, but within one-half mile thereof, and it shall be lawful for the owner or owners of any tract of land within one-half mile of said boundary line to lay out such land in the manner provided in said act, and it shall be the duty of such owner or owners so laying out a tract of land to comply with the provisions of the aforesaid act. (*a*)

Laying out of streets and roads within one-half mile of Wilmington to conform to lines within city.

(*a*) See Secs. 1 and 3 of the act which precedes this act, and the notes thereto.

No damages allowed where Sec. 1 has been violated.

SEC. 2. Should the owner or owners of any tract of land within one-half mile of the boundary line of said city, lay out such land contrary to and in violation of the provisions of the above-recited act, and of this act, then in the event of the extension of the limits of the city of Wilmington so as to include such land or lands, it shall be unlawful for any commission appointed for the purpose of opening and condemning streets extended through said tract or tracts of land to award any damages or compensation to any person or persons, for any house, building or structure hereafter placed or erected upon any ground lying between lines drawn from the building lines of such street or streets, as laid out in the city of Wilmington, to a point or points one-half mile from the limits thereof, in the direction which the said street or streets would take if extended thereto. (*a*)

(*a*) See Sec. 116 of the Charter—the last eight lines thereof.

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1. This Act was not duly enrolled and signed by the Speakers of the respective branches of the General Assembly, but is published in the Appendix to Vol. 20 Laws of Delaware.

Additional power.

[SEC. 3. Whenever the Board of Directors of the Street and Sewer Department of the City of Wilmington shall, on
22 D. L. 838. account of the conformation of the land and the difficulty of securing proper grades in the plotting out of any tract of land lying outside of the boundary line of the City of Wilmington as now, or hereafter extended, but within one half mile thereof, deem it advisable that such tract of land should not be laid out in conformity with the streets of Wilmington if extended, the said Board of Directors may approve of the plotting of any such tract of land in such manner, as in their judgment will be for the best interests of the said city.

SEC. 4. Upon the approval by said Board of Directors of any tract of land so plotted and laid out, the provisions of the act entitled, An Act to provide for the establishment of streets and grades on land contiguous to the City of Wilmington, Volume 19, Chapter 205, (*a*) Laws of Delaware, shall apply thereto as fully as though the said land had been plotted in conformity to the streets of the City of Wilmington if extended thereto.]

Passed at Dover, May 6, 1895.

(*a*) The act referred to, immediately precedes this act.

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19 D. L. 444. *AN ACT relating to Public Streets and Highways.*[1]

Opening streets to lay pipes, wires, etc.

SECTION 1. No person or corporation shall open or excavate the bed of any street or highway of any city, town or village in this State for the purpose of laying or placing pipes, wires or other conductors therein without first obtaining the consent (*a*) of the duly constituted authorities of such city,
Proviso. town, or village; *provided, however,* that nothing herein contained shall require such consent before opening or excavating
Repairs. the bed of any such street or highway for the purpose of re-

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1. Consent of Council * * * or other persons having control over the public roads, highways, streets, &c., required to be obtained before such public roads, highways, streets, &c., are disturbed, opened or dug up. See An Act providing a General Corporation Law. Vol. 22 D. L., p. 758, Sections 99, 101, 102, 104 and 105.

pairing any pipes, wires or other conductors theretofore lawfully laid or placed in such street or highway.

Passed at Dover, May 14, 1891.

(*a*) In 1891 the city restrained one Addicks from tearing up the streets of the city because the *consent* of the Stret and Sewer Department had not been obtained in accordance with the above section. The bill denied the Oxy-Hydrogen Co. had any legal organization. A demurrer was filed, and as it admitted, as true, what was contained in the bill, it was dismissed.

Mayor et al vs. Addicks et al, 7 Del. Ch. 56 at 81. (yr. 1893)

In 1894 a plea was filed. The Chancellor decided the Oxy-Hydrogen Co. was a valid corporation for the purposes of that suit, and the city was permitted to amend its bill.

Wilmington vs. Addicks, 8 Del. Ch. 310 at 344. (yr. 1899)

(The above section is referred to in the above case on p. 315.)

In 1900 the matter came up again on a mandamus against the city. The Court held the consent that had been granted to the corporation was *personal*, and the corporation could not assign or transfer it to another person.

Lore, C. J.: "It will be observed by the Charter that the right to open streets, &c., is conferred upon the company only."

Oxy-Hydrogen Co. vs. Simmons et al, 3 Penn. 291 at 293. (yr. 1901)

A contractor agreed to do the work for the company, and the Court said:

"His right is that of contract with the company, and to be enforced only against the company. * * We are at a loss to see in what way he has acquired rights against" the city, "or what duty" it "owes to him." id. 294. The writ desired to tear up *all* the streets of the city "where, when, and as its business may make it necessary." The Court said:

"This would tie up, for the future, the hands of the Board of Directors of the Street and Sewer Department of the city, and put the streets, health and convenience of the entire city at the mercy of the company," &c., and the Court refused to grant the writ. id. 295.

AN ACT in relation to Gilpin Avenue in the City of Wilmington. 19 D. L. 424.

SECTION 1. That the Board of Directors of the Street and Sewer Department of the City of Wilmington are hereby authorized and empowered to change and determine the curb lines of Gilpin avenue in said City of Wilmington; *provided*, that where curbs shall have been set before any change in the curb lines, as provided for in this Act, the same shall be reset at the expense of the said Board of Directors of the Street and Sewer Department. The said Board of Directors of the Street and Sewer Department are further authorized and empowered to define and determine what parts of the said

Change of curb lines.

At whose expense.

Paving regulations.

Gilpin avenue, between the curb and property lines, shall be paved and the width and character of such pavements.

Railways prohibited.

SEC. 2. That no passenger, freight, street railway or other track shall be laid on or along said Gilpin avenue, but the roadway of said avenue shall remain and be kept in good condition so as to afford a free and unobstructed passage for carriages, wagons and other vehicles used either for business or pleasure; *and provided further,* that no door-step, porch, bay, or brick window, cellar door, areaway, or other appurtenance to any building shall hereafter be erected beyond the building line on said Gilpin avenue.

Encroachments on street.

Trees and other plants.

SEC. 3. That the Board of Park Commissioners of the City of Wilmington are hereby authorized to set, sow and take charge of trees, grass and other plants on the unpaved parts of the spaces between the curb lines and the property lines on said Gilpin avenue.

Passed at Dover, May 5, 1891.

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15 D. L. 539.

AN ACT to repeal Chapter 64, Volume 4, Delaware Statutes, incorporating "The Wilmington Turnpike Company."

* * * * * * * * * * *

Portion of Wilmington Turnpike made public road.

SEC. 2. That the road now used and controlled by the said company, lying partly in the limits of the City of Wilmington, and partly in the Hundreds of Christiana and Mill Creek, in New Castle County, is hereby declared to be a public road and highway, and as such shall be maintained, repaired, managed and controlled as other *roads* and *streets* now are in said hundreds and city, respectively; *provided*, that the Levy Court of said county may maintain such of the bridges on said road as it may deem proper.

Proviso.

* * * * * * * * * * *

Passed at Dover, February 9, 1877.

AN ACT to authorize The Mayor and Council of Wilmington to contract with the Philadelphia, Wilmington and Baltimore Railroad Company in regard to a portion of Spruce street in the City of Wilmington.

14 D. L. 125.

Authority to contract with P., W. & B. R. R. Co. not to open Spruce street between Third and Fourth streets for ten years.

SECTION 1. That it shall and may be lawful for The Mayor and Council of Wilmington, a corporation existing under the laws of this State, and it is hereby authorized and empowered to contract and agree with the Philadelphia, Wilmington and Baltimore Railroad Company, also a corporation created by the laws of this State, on terms and conditions to be agreed upon by the contracting parties, and thereby legally bind said corporation, The Mayor and Council of Wilmington, and its successors, not to open or cause to be opened, a certain street called Spruce street, within its corporate limits, between Third and Fourth streets, as a thoroughfare or public street for a period of ten years from the date of any such contract or agreement.

Authority to renew contract for 50 years.

SEC. 2. That it shall and may be lawful for the said corporation, "The Mayor and Council of Wilmington" and its successors, and it is hereby authorized and empowered to renew from time to time any contract or agreement, so entered into by parties, corporations named in Section 1 of this Act as the same may expire, the said power of renewal to continue in and be exercised by the said corporation, The Mayor and Council of Wilmington, for a period of fifty years from the passage of this Act, and no longer.

Passed at Dover, March 2, 1871.

AN ACT to alter the direction of and to vacate portions of certain streets in the Ninth Ward of the City of Wilmington.

Courses of certain streets altered.

SECTION 1. That the present courses and directions of portions of certain streets hereinafter named, intersected by a new street called the Boulevard, recently laid out in the Ninth Ward of the City of Wilmington, be and the same are hereby altered as follows:

Nineteenth street, east.

Nineteenth street, east. The new course and direction of Nineteenth street lying east of the Boulevard and immediately contiguous thereto shall hereafter be as follows, to wit:

New course.

Beginning at a point in the centre line of the Boulevard (275) two hundred and seventy-five feet northerly from the centre stone at the intersection of Eighteenth street and the Boulevard; thence southeasterly at right angles to the centre line of the Boulevard until this centre line intersects the centre line of Nineteenth street as at present laid out.

Width.

That part of Nineteenth street thus laid out shall be fifty feet wide, measured at right angles to the centre line of said street.

Nineteenth street, west.

Nineteenth street, west. The new course and direction of Nineteenth street lying west of the Boulevard and immediately contiguous thereto shall hereafter be as follows, to wit:

New course.

Beginning at a point in the centre line of the Boulevard (450) four hundred and fifty feet northerly from the centre stone at the intersection of Eighteenth street and the Boulevard; thence northwesterly at right angles to the centre line of the Boulevard until this centre line intersects the centre line of Nineteenth street as at present laid out.

Width.

That part of Nineteenth street thus laid out shall be fifty feet wide, measured at right angles to the centre line of said street.

Twentieth street, east.

Twentieth street, east. The new course and direction of Twentieth street lying east of the Boulevard and immediately contiguous thereto shall hereafter be as follows, to wit:

New course.

Beginning at the centre stone where the centre line of Madison street intersects the centre line of Twentieth street as at present laid out; thence northwesterly in a line drawn at right angles to the centre line of the Boulevard until said Twentieth street intersects the centre line of the Boulevard.

That part of Twentieth street thus laid out shall be fifty feet wide, measured at right angles to the centre line of said street. Width.

Twentieth street, west. The new course and direction of Twentieth street, lying west of the Boulevard and immediately contiguous thereto shall hereafter be as follows, to wit: Twentieth street, west.

Beginning at the centre stone where the centre line of Monroe street intersects the centre line of Twentieth street; thence southeasterly in a line drawn at right angles to the centre line of the Boulevard until the said Twentieth street intersects the centre line of the Boulevard. New course.

That part of Twentieth street thus laid out shall be sixty feet wide, measured at right angles to the centre line of said street. Width.

Twenty-first street, east. The new course and direction of Twenty-first street lying east of the Boulevard and immediately contiguous thereto shall hereafter be as follows, to wit: Twenty-first street, east.

Beginning at a point in the centre line of the Boulevard, (960) nine hundred and sixty feet northerly from the centre stone at the intersection of Eighteenth street and the Boulevard; thence southeasterly at right angles to the centre line of the Boulevard, until this centre line intersects the centre line of Twenty-first street as at present laid out. New course.

That part of Twenty-first street thus laid out shall be fifty feet wide, measured at right angles to the centre line of said street. Width.

Twenty-first street, west. The new course and direction of Twenty-first street lying west of the Boulevard and immediately contiguous thereto shall hereafter be as follows, to wit: Twenty-first street, west.

Beginning at a point in the centre line of the Boulevard (1190) eleven hundred and ninety feet northerly from the New course.

centre stone at the intersection of Eighteenth street and the Boulevard; thence northwesterly at right angles to the centre line of the Boulevard until this centre line intersects the centre line of Twenty-first street as at present laid out.

Width. That part of Twenty-first street thus laid out shall be fifty feet wide, measured at right angles to the centre line of said street.

Twenty-second street, east. Twenty-second street, east. The new course and direction of Twenty-second street lying east of the Boulevard and immediately contiguous thereto shall hereafter be as follows, to wit:

New course. Beginning at the centre stone where the centre line of Monroe street intersects the centre line of Twenty-second street; thence northwesterly in a line drawn at right angles to the centre line of the Boulevard, until the said Twenty-second street intersects the centre line of the Boulevard.

Width. That part of Twenty-second street thus laid out shall be sixty feet wide, measured at right angles to the centre line of said street.

Twenty-second street, west. Twenty-second street, west. The new course and direction of Twenty-second street lying west of the Boulevard and immediately contiguous thereto shall hereafter be as follows, to wit:

New course. Beginning at the centre stone where the centre line of Wooddale avenue intersects the centre line of Twenty-second street; thence southeasterly in a line drawn at right angles to the centre line of the Boulevard until the said Twenty-second street intersects the centre line of the Boulevard.

Width. That part of Twenty-second street thus laid out shall be sixty feet wide, measured at right angles to the centre line of said street.

Twenty-third street, east. Twenty-third street, east. The new course and direction of Twenty-third street lying east of the Boulevard and im-

mediately contiguous thereto shall hereafter be as follows, to wit:

Beginning at a point in the centre line of the Boulevard, (1760) seventeen hundred and sixty feet northerly from the centre stone at the intersection of Eighteenth street and the Boulevard; thence southeasterly at right angles to the centre line of the Boulevard until this centre line intersects the centre line of Twenty-third street as at present laid out. New course.

That part of Twenty-third street thus laid out shall be fifty feet wide, measured at right angles to the centre line of said street. Width.

Twenty-third street, west. The new course and direction of Twenty-third street lying west of the Boulevard and immediately contiguous thereto shall hereafter be as follows, to wit: Twenty-third street, west.

Beginning at a point in the centre line of the Boulevard (1960) nineteen hundred and sixty feet northerly from the centre stone at the intersection of Eighteenth street and the Boulevard; thence northwesterly at right angles to the centre line of the Boulevard until this centre line intersects the centre line of Twenty-third street, as at present laid out. New course.

That part of Twenty-third street thus laid out shall be fifty feet wide, measured at right angles to the centre line of said street. Width.

Wooddale avenue, east. The new course and direction of Wooddale avenue lying east of the Boulevard and immediately contiguous thereto shall hereafter be as follows, to wit: Wooddale avenue, east.

Beginning at the intersection of the centre line of Wooddale avenue with the centre line of Elliott[1] avenue thence westerly and at right angles to the centre line of Elliott[1] avenue until the said Wooddale avenue intersects the centre line of the Boulevard. New course.

That part of Wooddale avenue thus laid out shall be sixty Width.

feet wide, measured at right angles to the centre line of said avenue.

Certain parts of certain streets vacated.

SEC. 2. That Madison street, between Eighteenth street and Twenty-first street; Monroe street, between Twentieth street and Twenty-second street; Wooddale avenue, between Twenty-second street and Elliott avenue, and Twenty-fourth street, between Elliott avenue and Park lane, as at present laid out, be and the same are hereby vacated.

SEC. 3. That all Acts and parts of Acts inconsistent herewith be and the same are hereby repealed.

Passed at Dover, April 28, 1893.

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10 D. L. 362.

Robinson street, from Poplar street to Church street, laid down in the city plot as one of the city streets, at forty feet wide, at one hundred and sixty-seven feet eight inches south of Third street, and one hundred and sixty-seven feet eight inches north of Second street, by act February 24, 1849.

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13 D. L. 58-9.

Name of the Marsh road in Brandywine Hundred, running from the Wilmington and Philadelphia Turnpike road to Shellpot Dam in Cherry Island Marsh, changed to "Vandever Avenue," January 18, 1866.

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20 D. L. 158.

AN ACT in relation to "D" Street in the City of Wilmington.

* * * * * * * * * *

Change in "D" street by Street and Sewer Department made valid.

SECTION 1. That "D" street in the City of Wilmington shall be sixty feet wide from Market street causeway to Christiana avenue, with the centre line of said street parallel to and at the distance of four hundred and seventy feet southerly from the centre line of "C" street.

SEC. 2. That this act shall be deemed and taken to be a public act and all acts and parts of acts inconsistent herewith are hereby repealed.

Passed at Dover, April 13, 1895.

AN ACT to authorize the "Street and Sewer Department" of the City of Wilmington, State of Delaware, to further extend and open Eleventh street in said city from Madison street to Adams street, and Monroe street in said city from Tenth street to Delaware avenue. 18 D. L. 873.

SECTION 1. It shall be lawful for the "Street and Sewer Department" for said City of Wilmington, by a vote of two-thirds of the Board of Directors thereof for the time being, further to extend Eleventh street, as laid down upon the map, plan or ground plot of said city from Madison street to Adams street. Eleventh street.

SEC. 2. It shall be lawful for the "Street and Sewer Department" for said City of Wilmington, by a vote of two-thirds of the Board of Directors thereof for the time being, further to extend Monroe street as laid down upon the map, plan, or ground plot of said city, from Tenth street to Delaware avenue. Monroe street.

SEC. 3. All Acts or parts of Acts inconsistent herewith are hereby repealed.

Passed at Dover, March 13, 1889.

AN ACT to further amend the Charter of the City of Wilmington. 15 D. L. 563.

* * * * * * * * * *

SEC. 26. That it shall not be within the power of the City Council of the said City of Wilmington to open and extend West street in the direction of the Christiana river, further than its present terminus, as laid down and fixed by the ground plot or map of the said city, to wit: The line of an old street, *now vacated*, called Dock street, or beyond a point in said West street, in the direction of the said Christiana river, distant five hundred and twelve feet from the centre stone at the intersection of Front and West streets. Extension of part of West street prohibited.

* * * * * * * * * *

Passed at Dover, March 21, 1877.

10 D. L. 258. By an Act entitled "A further supplement to the Act entitled 'An additional supplement to the Act to alter and re-establish the charter of the Borough of Wilmington,' " passed at Dover, January 31st, 1849, the City Council authorized to vacate an old road or street, commencing at Washington street and running to the city line on the west, commonly known as Love Lane and Willing street.

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10 D. L. 497. Eleventh street, between Jefferson street and the city line on the west; Monroe street, between Tenth street and the Delaware avenue; and Wilmington avenue, between Front and Fourth streets, vacated February 14, 1851.

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10 D. L. 633-4. By Act of February 4th, 1852, Water street, between Poplar street and the Christiana river, vacated.

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11 D. L. 26. Part of Madison street, vacated February 3, 1853.

Note.—This Act confirms an ordinance vacating Twelfth street, from Madison street to line of the Wilmington and Brandywine cemetery.

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11 D. L. 144. Tenth street, between the westerly side of Tatnall street and easterly side of West street, vacated January 12, 1855.

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11 D. L. 145. Dock street, from Thorn street to the P., W. & B. R. R., vacated January 12, 1855.

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11 D. L. 161. Washington street, between Front street and the P., W. & B. R. R., vacated January 17, 1855.

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11 D. L. 735. Fifteenth street, vacated February 24, 1859.

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11 D. L. 198. Orange street, between Fourteenth street and Brandywine creek, vacated February 10, 1855.

Note.—Right to city reserved to have and maintain a trunk or sewer trunk or gutter along line of Orange street, through lands of Rt. Rev. Alfred Lee, to carry water from Orange and Fourteenth streets to Brandywine creek. See Sec. 1 of Act.

Fifteenth street, between Market street and Tatnall street, vacated February 14, 1861. 12 D. L. 46.

Townsend or Marsh road, between westerly side of Heald street and northerly side of Lobdell street, vacated March 23, 1871. 14 D. L. 242.

Fifth street, between P., W. & B. R. R. and low water mark on the Christiana river, vacated March 18, 1873. 14 D. L. 569.

Note.—This Act confirms an ordinance, and reserves the right to lay a sewer. See ordinance, March 7, 1873.

Kings road or Old Ferry road, vacated January 29, 1847; March 28, 1871, and April 9, 1873, and May 19, 1897. 10 D. L. 119. 14 D. L. 243. 14 D. L. 658. 20 D. L. 685.

Kennett Turnpike road within city limits, and Miller lane or Gilpin lane, vacated March 15, 1865. 12 D. L. 624.

Walnut street, between Water street and Front street; and Spruce street, between Robinson street and Front street; and Second street, between Pine street and Church street, vacated March 8, 1877. 15 D. L. 541.

Note.—These streets were vacated for depot purposes of P., W. & B. R. R. Company.

Water street, between easterly building line of French street and westerly building line of Poplar street; and between the northerly curb line and the northerly building line of said Water street, vacated February 10, 1881. 16 D. L. 670.

Note.—This street vacated for depot purposes of P., W. & B. R. R. Company.

Wilmington and Christiana turnpike road within the limits of the City of Wilmington, (Maryland avenue,) vacated and made a public highway or street February 9, 1883. 17 D. L. 399.

17 D. L. 403. Sixteenth street, from Scott street to DuPont street, and Fourteenth street to Delaware avenue, vacated April 19, 1883.

Note.—This street was vacated for depot purposes for the Baltimore and Philadelphia R. R. Company with the proviso that the depot should be erected in whole or in part before May 1, 1886.

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17 D. L. 886. Right to open Twelfth street, between the westerly side of Jackson street and the easterly side of Clayton street, prohibited; and all rights of The Mayor and Council of Wilmington therein for street purposes extinguished April 8, 1885.

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12 D. L. 489. Reed street, from Wilmington and Christiana Turnpike to Monroe street, vacated August 16, 1864.

Note.—This is an act confirming an ordinance.

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17 D. L. 892. Vacated April 14, 1885. Reed street, from the easterly side of Maryland avenue to the westerly side of Madison street, and extending in width from the northerly building line of said Reed street, to within four feet from the northerly curb line of said street.

Portion of Reed street vacated. [And all that portion of the said Reed street from the westerly side of Monroe street to the easterly side of Adams street. That within ten secular days after the passage of this act the firm of F. Blumenthal & Co. shall pay to the Mayor and Council of Wilmington the sum of two thousand (2000) dollars indemnity for the vacation of Reed street in the City of Wilmington, Delaware, from the westerly side of Monroe street to the easterly side of Adams street. That the Street and Sewer Department and Water Department or their successors shall at all times have access to the vacated part of Reed street referred to in this act, to examine, inspect or repair the respective property under their jurisdiction.]

20 D. L. 679. Indemnity to city.

Access to vacated street.

Passed at Dover, May 12, 1897.

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17 D. L. 868. Dock street from west side of Orange street to east side of Thorn street, vacated February 24, 1885.

A SUPPLEMENT to Chapter 147 of Volume 11 of the Laws of Delaware.

Part of West Dock street vacated.

SECTION 1. That West Dock street, sometimes called Dock street, as now or at any time heretofore laid down on the map or plan of the City of Wilmington, so far as the same extends from the southeasterly side of Maryland avenue eastwardly to the Philadelphia, Wilmington and Baltimore Railroad, be and the same is hereby vacated; and all provisions of law or of the ordinances of said city, so far as the same are inconsistent with this Act, are hereby repealed.

Passed at Dover, April 11, 1889.

AN ACT vacating certain lands in the City of Wilmington. 18 D. L. 895.

Part of G street vacated.

SECTION 1. That all part of Christiana avenue or G street which was conveyed to The Mayor and Council of Wilmington by Lucas Alrich and Mary M., his wife, by deed of indenture bearing date July 26th, 1871, and recorded in the Recorder's Office at Wilmington, in and for New Castle County, in Deed Record Q, Vol. 9, page 407, &c. (and which said covenants was made for public use as a part of the bed of Christiana avenue or G street as a public highway forever), be and the same is hereby vacated as a public highway and for any public purpose whatsoever.

Deeds.

SEC. 2. That the Mayor and Council of Wilmington is hereby authorized and directed through its proper officers to make, execute and deliver such deed or deeds or other assurances in the law as may be found to be necessary for the carrying into effect of the intents and purposes of this Act and that Chapter 189, Volume 18 of the Laws of Delaware, so far as the same relates to said City of Wilmington be and the same is hereby repealed and rendered void.

Chap. 189, Vol. 18, repealed.

Passed at Dover, April 26, 1889.

AN ACT to vacate parts of King, French and Walnut streets, in the City of Wilmington. 19 D. L. 406.

Parts of certain streets in the city of Wilmington vacated.

SECTION 1. That all part of King street which lies south of C street, all that part of French street which lies south of

D street, and all that part of Walnut street which lies south of E street, in the City of Wilmington, be and the same are hereby vacated, and the person or persons through whose lands the parts of said streets so vacated run or pass are hereby authorized to enclose and hold the same.

Enclosure.

Passed at Dover, April 1, 1891.

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19 D. L. 407. *AN ACT to vacate a portion of an Old Road in the City of Wilmington.*

Preamble. WHEREAS it has been represented to this General Assembly that so much of what was formerly an old road in the city of Wilmington, known as Riddle's road, lying between the point where it intersected the westerly side of DuPont street, between Gilpin and Shallcross avenues, and the point where, after crossing Shallcross and Lovering avenues and Wawaset street, it intersects the easterly side of Scott street north of Wawaset street, in said city, has not for some time been used or needed as a roadway by reason of the opening and paving of Scott street and other adjacent streets and avenues;

AND WHEREAS it is further represented that the parties claiming the fee simple to the land formerly used as a roadway have conveyed portions thereof to owners of land abutting on the line of said old road and are desirous of conveying their interest in the remaining portions of said old roadway, therefore

Riddle's road in Wilmington vacated. SECTION 1. That so much of that tract of land in the City of Wilmington, formerly used as a road and known as Riddle's road, as lies between the point of its intersection with the westerly side of DuPont street, between Gilpin and Shallcross avenues, and the point of its intersection with the easterly side of Scott street north of Wawaset street, be and the same is hereby vacated, and the same may be enclosed or occupied by any person or persons to whom conveyances have been or may hereafter be made by the heir-at-law of Leander F. Riddle, deceased, who was the devisee of James Riddle, deceased, who claims to be entitled to the land so occupied by said road.

SEC. 2. This Act shall be deemed and taken to be a public Act, and all Acts and parts of Acts inconsistent herewith are hereby repealed. Public act.

Passed at Dover, April 17, 1891.

AN ACT to vacate a portion of Buttonwood Street in the City of Wilmington.

SECTION 1. For the purpose of allowing the Wilmington Malleable Iron Company to enlarge and extend its buildings on Buttonwood street in the City of Wilmington; so much of said Buttonwood street as lies between the northerly building line of Taylor street and the southerly building line of Ninth street is hereby vacated; and the Wilmington Malleable Iron Company is hereby authorized to enclose and build upon the same; *provided*, that upon the failure of the Wilmington Malleable Iron Company, its successors or assigns, within three months after the passage of this Act to use and occupy said Buttonwood street for the purposes herein mentioned then said Act to be void and of no effect; *and provided also*, that whenever the said Wilmington Malleable Iron Company, its successors or assigns, shall cease to occupy and use the buildings erected upon said Buttonwood street for business purposes then this Act to be void and of no effect and the said street shall be opened by the Board of Directors of the Street and Sewer Department for public travel. Certain part of Buttonwood street vacated. Authority to build thereon. Proviso. Further proviso.

SEC. 2. All Acts or parts of Acts inconsistent herewith are hereby repealed.

Passed at Dover, April 19, 1893.

AN ACT to vacate Brobson's Lane in the City of Wilmington.

20 D. L. 161.

* * * * * * * * * *

SECTION 1. That a lane situated in the City of Wilmington extending from Pennsylvania avenue to Eleventh street and known as Brobson's lane shall be vacated when Scott street extending from Pennsylvania avenue to Eleventh street in said city shall be opened and free for travel. Brobson's lane to be vacated when Scott street is opened.

Owners of adjacent land to enclose same.

SEC. 2. The lane when vacated shall belong to and become the property of the respective owners of real estate adjacent thereto, each of the said owners having respectively the ownership therein the width of his front to the middle line of said lane.

Passed at Dover, April 27, 1895.

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20 D. L. 665. *AN ACT to vacate the Rockford or Bancroft Road in the City of Wilmington.*

* * * * * * * * * *

SECTION 1. That the road situated in the City of Wilmington and known as the Rockford or Bancroft road, extending from Delaware avenue to Pennsylvania avenue, shall be vacated when and as the adjacent and corresponding parts of Woodlawn avenue shall be declared by the board of directors of the street and sewer department open for travel.

Road vacated.

When.

[*Provided,* that the owner or owners of all lands abutting on said Rockford or Bancroft road shall be allowed compensation for damages incurred by reason of such vacating or closing of said Rockford or Bancroft road; such damages to be determined, assessed and paid in the same manner in all respects as is now provided by law for the assessment and payment of damages incurred by the opening of new streets in the City of Wilmington.]

Damages to adjacent owners for vacating road.

Act of May 20, 1897. 20 D. L. 666.

Adjacent owners may enclose land.

SEC. 2. That the land of said road as it shall be vacated shall be or become the property of the respective owners of real estate bordering thereon, each of the said owners to have respectively ownership therein the width of his front to the middle of said road.

Passed at Dover, March 10, 1897.

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20 D. L. 688. *AN ACT to vacate a portion of Hawley Street, in the City of Wilmington.*

* * * * * * * * * *

Portion of Hawley street vacated.

SECTION 1. That all that portion of Hawley street, as laid down on the maps of the City of Wilmington, shall be va-

cated at the point or points where said Hawley street is crossed by the Baltimore and Philadelphia Railroad Company whenever and as soon as a bridge shall have been built and opened for travel, crossing the said railroad at a point on the line of Fourth street. When.

Passed at Dover, May 21, 1897.

AN ACT to vacate certain Roads and Streets in the City of Wilmington. 20 D. L. 157.

* * * * * * * * * * * *

SECTION 1. That those parts or portions of "The Townsend Road" commencing at its intersection with the westerly side of Buttonwood street and Lobdell street, and extending in a westerly direction to its intersection with Market street at "A" street excepting such portion of said road as may be within the lines of "A" street as laid out on the plans of Wilmington, be and the same is hereby vacated, and the owners of the fee of the land over which or through which the said road hereby vacated runs or passes, are hereby authorized to enclose and hold the same; *provided*, that no portion of the said road hereby vacated shall be closed until "A" street shall be opened for public travel. Portion of Townsend street vacated. Owners of adjacent land may enclose same. Proviso.

SEC. 2. That Duncan avenue, extending from "G" street to the Christiana River, be and the same is hereby vacated, and the owners of the fee of the land over which or through which the said avenue hereby vacated runs or passes are hereby authorized to enclose and hold the same. Duncan avenue vacated. Owners of adjacent land may enclose same.

SEC. 3. That "G" street from its intersection with Christiana avenue easterly toward the Delaware River, be and the same is hereby vacated, and the owners of the fee of the land over which or through which the said road hereby vacated runs or passes are hereby authorized to enclose and hold the same. Portion of "G" street vacated. Owners of adjacent land may enclose same.

Passed at Dover, April 13, 1895.

CHAPTER X.

ACTS IN RELATION TO REGISTRATION OF VOTERS.

	Page
1. Act to Provide for the Registration of Voters in the City of Wilmington...	272
2. Act Providing for a Uniform System of Registration of All Qualified Voters in This State.....	301
3. Act Concerning the Appointment of Registration Officers and the Preparation and Delivery of Registration Books	323
4. Act Making it Unnecessary to enter "Color" or "Age," in "Registers"....	326
5. Act Striking Out of Section 4 of Article V of the Constitution All Thereof Requiring the Payment of Money as a Qualification to Register	327
6. Act Making it Unnecessary to Pay a Registration Fee as a Qualification to Vote.	327

AN ACT to provide for the Registration of Voters in the City of Wilmington. (a)

(a) *Lore, C. J.*: "The purpose of this statute is to secure the purity of elections, and to ascertain and enforce the honest will of the people as expressed by the ballot."
State vs. Brand, 2 Marv. 459 at 460. (yr. 1897)

SECTION 1.[1] * * * * * * * * *

SEC. 2.[2] * * * * * * * * * *

[Each member of the Department of Elections shall receive as compensation for his services in any year in which there is

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1. This section referred to general registration of voters. It is supplied by Act of May 27, 1898, 21 D. L. 69, p. 301 this volume.

The revision of registration, also referred to in this section, is supplied by Act of March 24, 1903, 22 D. L. p. 593, Sec. 1, p. 352 this volume. (This Act amends Sec. 18 of the Act of May 27, 1897, 20 D. L. p. 375, generally known as the Primary Election Law.) p. 352 this volume.

2. This section referred to the appointment of a Department of Elections,—the term of office, oath, duties, powers, &c. It is supplied by the following Acts:

Act May 20, 1898, 21 D. L. p. 139, Secs. 1 and 2, pp.329-330 this volume; two Acts of June 1, 1898, 21 D. L. pp. 94 and 146, pp. 337-338 this volume; Act Mar. 8, 1901, 22 D. L. p. 117, p. 338 this volume; Act of Mar. 9, 1907, 24 D. L. p. 153, p. 341 this volume; see also Sec. 2 et seq of this Act of May 13, 1891, 19 D. L. 128, printed in the Appendix.

held a general or special election, a salary of five hundred dollars to be paid as hereinafter provided. And each of the said members shall receive from the City of Wilmington as compensation for his services in any year in which there is held a municipal election, a salary of five hundred dollars, payable as other municipal election expenses are paid.][1]

SEC. 3. The duties of the members of the Department of Elections shall be as follows: Duties of Department of Elections.

1.[2] * * * * * * * * * * *

2. They shall designate and appoint a place of registry and polling place in each election district in the city,[3] * * * and the said Department of Elections shall hire[4] all such places and cause the same to be fitted up, warmed, lighted and cleaned, but in such election district such place shall be in the most public, orderly and convenient portion of the district, and no building or part of a building shall be designated or used as a place of registry or polling place in which, or in any part of which, spirituous or intoxicating liquor is or has been sold within sixty days next preceding the time of using the same. Place of registry. Furnishing of rooms for registration. Intoxicating liquors.

3.[5] * * * * * * * * * * *

4 They shall prepare and furnish all necessary * * * books, * * * forms, oaths, certificates, blanks and in- Necessary conveniences and supplies, etc.

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1. See Act April 6, 1893, 19 D. L. p. 985, Sec. 6, p. 399 of this volume.

2. This section referred to the division of the city into election districts. It has been supplied by Act May 20, 1898, 21 D. L. p. 140, Sec. 3, Part I, p. 331 this volume. See also Act of June 1, 1898, 21 D. L. p. 146, pp. 337-8 this volume, and Act of June 1, 1898, 21 D. L. p. 94, p. 137 this volume.

3. The provision in this section relating to the giving of notice of the time of registration is supplied by Act of May 27, 1898, 21 D. L. p. 69, Sec. 2, paragraph 2, p. 302 this volume. See also Act June 1, 1898, 21 D. L. p. 94, p. 337 this volume as to places of holding elections. See also same Act p. 114, Sec 8 as to notice of time and place of holding elections. The rest of the section has been treated as obsolete, it being presumed that the Act of May 27, 1898, above mentioned, has supplied the whole section.

4. The Levy Court pays the expenses incurred by this hiring. See Act May 27, 1898, 21 D. L. p. 86, Sec. 21, Part V, p. 318 this volume.

5. This section referred to the preparation of books known as "registers." The Governor does this now. See Act May 20, 1898, 21 D. L. p. 66, Sec. 3, p. 323 this volume.

structions for the use of the inspectors of election, provide for the furnishing of such officers therewith and with all necessary supplies, and also a copy of this law for their guidance.[1]

* * * * * * * * * * * *

Power to dismiss election officers.

May employ clerks and assistants.

Proviso.

5. They shall have power to dismiss any election officer at any time and supply his place with another person.[2] They may also employ a clerk and such other assistants as in the judgment of the members of said department shall be necessary and proper for the faithful performance by the department of the duties by this Act imposed; *provided*, the expense thereof shall not exceed fifteen hundred dollars in any one year, which said sum shall not include the compensation of members of the Department of Elections, inspectors, and poll clerks, to be paid as provided in this Act.[3]

6.[4] * * * * * * * * * * *

Election machinery to be furnished.

7. They shall furnish the inspectors of election in each election district with the hereinafter named election machinery:

(*a.*)[5] * * * * * * * * * * *

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1. The Registrars keep the Registers, Books of Registered Voters and registration certificates and all other papers relating to the registration of voters. Act of May 27, 1898, 21 D. L. pp. 83-84, Sec. 17 and 19, pp. 316 and 317 this volume. The Inspector of Elections does the same, and keeps all oaths, affirmations, &c., until day after election, when the same are returned to Clerk of Peace. Act June 1, 1898, 21 D. L. p. 132, Sec. 29.

2. As to general power of appointment and dismissal of election officers see Act June 1, 1898, 21 D. L. p. 146, p. 337 this volume.

3. For similar powers, practically supplying the above sections, see Act May 20, 1898, 21 D. L. p. 140, Sec. 3, Part II, p. 331 this volume. This Act also refers to registration officers.

4. This section gave the Department of Elections power to make inquiries as to deaths of persons, and to have copies of same made, and to have certain entries relative thereto, made in the "Registers." The Act of May 20, 1898, 21 D. L. p. 66, Sec. 3, and the Act of May 27, 1898, 21 D. L. p. 70, Sec. 4 et seq (pp. 323 and 303 of this volume) provide for the entries to be made in the Registers, and they contain no reference to what is mentioned in the above section, and the forms and blanks to be used, could not include what is mentioned in said section.

5. The above referred to ballot boxes, and is supplied by Act of June 1, 1898, 21 D. L. at p. 109, Sec. 4.

(*b.*)[1] * * * * * * * * * * To appoint inspectors and fill vacancies.

8. They shall, hereafter, appoint all inspectors of elections * * * * *[2] in said city, and shall also make all necessary removals and transfers of election officers and fill all vacancies which from any cause may occur.[3]

9.[4] * * * * * * * * * * *

Every person so selected to be an election inspector shall, on receipt of notice thereof, appear within ten days thereafter before said department for the purpose of examination, and if found qualified shall, unless excused by the department by reason of ill-health or other good and sufficient cause, be bound to serve as such officer at every registration and election for the term for which he is appointed, and shall take the following oath of office, which oath may be administered by any member of the Department of Elections:[5] Examination and qualification.

I, ———— residing at No. ———— in the City of Wilmington, do solemnly swear (or affirm) that I will support the Constitution of the United States and of the State of Delaware, and that I will faithfully discharge the duties of the office of inspector of election for the ———— election district of the ———— ward of the City of Wilmington, according to the best of my ability, (*a*) and that I am a citizen of the United States and of the State of Delaware, a qualified voter in the City of Wilmington and not a candidate for any office Oath of office.

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1. The above referred to tax receipts and stamps.

Article V, Sec. 4, par. 3 of the Constitution 1897 provides that one should vote by paying a registration fee of $1. This registration fee is now abolished. See Act March 30, 1905, 23 D. L. p. 11, p. 327 this volume, and Act March 4, 1907, 24 D. L. p. 146, p. 327 this volume.

2. The part omitted related to the appointment of clerks. The Judges of Election appoint them, now. Act June 1, 1898, 21 D. L. p. 116, Sec. 13.

3. For general powers to appoint election officers, etc., see Act June 1, 1898, 21 D. L. p. 146, p. 337 this volume.

4. This section referred to the appointment of "election," meaning registration, officers. It is supplied by Act of May 20, 1898, 21 D. L. p. 141, Sec. 3, Part IV, p. 332 this volume. The Act of June 1, 1898, 21 D. L. p. 146 (p. 337 this volume) gives the Department of Elections power to appoint and remove all election officers.

5. See Act May 20, 1898, 21 D. L. at p. 143, Sec. 4, p. 335 of this vol.

to be voted for by the electors of the district for which I am appointed.

(*a*) This oath, to where the note is made, is verbatim, like the one prescribed in Art. 14 of the Constitution of 1897. In the case below cited, it was contended that the constitutional oath was the only oath that was necessary to be taken. The Court, without deciding the matter, admitted in evidence the primary election oath, which was then before the Court, and the subject of argument.

State vs. Matlack et al, 5 Penn. 401 at 420. (yr. 1905)

(See p. 345 of this volume.)

Penalty for neglect or refusal to comply with requirements.

In case of refusal or neglect on the part of any person so selected to be an election inspector to comply with the above requirements, or to serve, or to act, he shall be liable to a penalty of two hundred dollars,[1] recoverable by said department by civil action in any court of record in the name of the "President of the Department of Elections of the City of Wilmington," and for the use and benefit of New Castle County;

What shall constitute refusal under this Act.

and the failure on the part of any such person to present himself for examination within the time prescribed or to comply with any of the requirements of this Act preliminary to receiving his certificate of appointment, or to attend on the day of any registration or the day of any election during his term, unless prevented by sickness or other sufficient cause, the burden of proof of which shall be upon the delinquent, shall be deemed a refusal within the meaning of this Act. The Department of Elections shall deliver a certificate of appointment to

Certificate of appointment.

whomsoever shall be nominated, approved and sworn into office by it as an inspector of elections, said certificate to be in such form as shall be prescribed by such Department of Elections, specifying the election district in and for which the person to whom the same is issued is appointed to serve, and the date of the expiration of his term of office. The inspectors of elections appointed under the provisions of this Act shall re-

Term of office.

spectively hold office for the term of two years unless sooner removed for want of requisite qualifications, or for cause; in

Removal.

either of which cases such removal, unless made while the inspectors are actually on duty on a day of registration or election and for improper conduct as an election officer, shall only

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1. See above Act, Sec. 4, and also Act June 1, 1898, 21 D. L. p. 115, Sec. 11.

be made after notice in writing to the officer sought to be removed, which notice shall set forth clearly and distinctly the reasons for his removal. Any person appointed to fill any vacancy shall serve for the unexpired term of the person whose office he is appointed to fill. The neglect or refusal of any person so appointed as inspector as aforesaid to appear and qualify as an inspector within the time herein prescribed shall be deemed to create a vacancy in said office.

Vacancy.

What constitutes a vacancy.

10.[1] * * * * * * * * * * *

In case of refusal or neglect on the part of any person * * to be a poll clerk to comply with the above requirements, or to serve, or to act, he shall be liable to a penalty of two hundred dollars, recoverable in the same manner and for the same use as the penalty above provided in case of refusal or neglect on the part of an inspector of election.[2] [* * * * *]

Penalty for refusal or neglect to comply.

Act of April 13, 1893.

Inspectors of election and poll clerks * * * * * * * * * * shall be entitled to receive three dollars for each day's service at any registration[3] or election, such compensation not to exceed in the aggregate the sum of fifteen dollars; *provided,* that the inspector whose duty it shall be to attend the meeting of the board of canvass shall receive the additional sum of three dollars as a compensation for said attendance. The said compensation shall be paid on the certificate of the President of Department of Elections,[4] as to the period of service, but no payment shall be made to any person as inspector of election or poll clerk who shall not have taken, subscribed and filed the oath (*a*) or affirmation required therein, and who shall not, during the period of his service have fully

Compensation.

Proviso.

How paid.

Oath, failure to take or comply with.

1. This section gave the Department power to appoint poll clerks. This power is now exercised by the Judges of Election. See Act June 1, 1898, 21 D. L. at p. 116, Sec. 13.

2. The Department no longer having power to appoint clerks, the above penalty is not supposed to be operative.

3. The Registrars now receive for each day of actual registration the sum of $5. Act May 27, 1898, 21 D. L. p. 85, Sec. 21, p. 317 of this volume. But the provision in the above section is applicable for the day of *revision* of registration.

4. Under the Act of May 27, 1898, 21 D. L. p. 86, Sec. 21, IV, the President of the Levy Court certifies to the State Treasurer the amount due the Registrars, and he pays them. See p. 318 of this volume. For municipal elections the above provision is applicable.

complied with all the requirements of law in anywise relating to his duties; and the acting of any such person in either of said capacities without having taken, subscribed and filed the said oath or affirmation, shall be deemed to be a misdemeanor and punished as such. Inspectors of election and poll clerks, during the time they hold such office, shall be exempt from the performance of military and jury[1] duty, and no person who, by the law of this State is exempt from jury duty, shall be required to serve as an inspector or poll clerk under this Act.

Exemption from certain duties.

(*a*) See note "a" to Sec. 3, (10), of this Act.

Inspectors to meet and perform the following acts.

SEC. 4. The inspectors of election appointed pursuant to the provisions of this Act shall, at the times in this Act designated for registration, meet in their respective election districts at the places which, as provided in this Act, shall be designated therein for such meeting and at such times[2] in each election district the said inspectors of election shall openly and publicly do and perform the following acts, viz:

Organization.

1. They shall organize as a board by selecting one of their number to act as chairman, but in case of failure to so organize within fifteen minutes after the time fixed for meeting, the chairman shall be selected by lot.[3]

Application.

2. They shall receive and enter upon their several registers the application for registration of all male persons who shall personally present themselves.[4]

Session.

3. They shall remain in session on each of said days and on each of the days for revision of registration from between

1. See Act Feb. 25, 1909, 25 D. L. p. 534, Sec. 1.
2. See various notes to the different sections of the Act.
3. Act June 1, 1898, 21 D. L. at p. 114, Sec. 10 makes the Inspector of Election the Judge and the presiding officer. Act of May 20, 1898, 21 D. L. p. 141, Sec. 3, IV, says one shall be "Registrar," and the other two "Assistant Registrars;" (p. 332 of this volume) and Act of May 27, 1898, 21 D. L. at p. 76, Sec. 9 says two shall constitute a quorum, and the acts of a majority shall be as valid as the acts of all of them. P. 310 of this volume.
4. See Act May 27, 1898, 21 D. L. at p. 70, Sec. 4 for the entries to be made, p. 303 this volume.

the hours of eleven and twelve o'clock in the forenoon and seven o'clock in the afternoon.[1]

4.	* * *	Supplied, Act May 27, 1898, 21 D. L. 70, Sec. 4, Third.	Fifth—[3]	* *	Repealed, Act. March 14, 1901, 22 D. L. 111, Sec. 1.
First—	* *	Supplied, 21 D. L. 71, Sec. 4, Third V.	Sixth—	* *	Supplied, 21 D. L. 71, Sec. 4, Third VI.
Second—	* *	Supplied, 21 D. L. 70, Sec. 4, Second.	Seventh—	*	Supplied, 21 D. L. 71, Sec. 4, Third VII.
Third—[2]	* *		Eighth—	* *	Supplied, 21 D. L. at 71, Sec. 4, Third IX.
Fourth—	* *	Supplied, 21 D. L. at 71, Sec. 4, Third IV.	Ninth—	* *	Supplied, 21 D. L. 72, Sec. 4, Third X.

Inspectors to meet in their respective election districts to perform certain duties.

SEC. 5. On the days and at the times * * * * for any revision of any general registration, the duly qualified inspectors of election shall meet in their respective election districts, at the places which, in accordance with the requirements of this Act, shall have been provided for such meetings, and shall openly and publicly do and perform the following acts, namely: each and every of the duties and requirements set forth in sub-divisions one and three of Section 4 of this Act.[4] They shall in each election district receive the applications for registration of all such male persons whose names are not then borne upon the registers thereof as qualified voters therein as shall personally present themselves, and who, on the day of election next ensuing, would be entitled to vote therein; and as to all applications made to them shall proceed in the manner provided in sub-division 4 of Section 4 of this Act;[5]

Applications.

1. Act May 27, 1898, 21 D. L. p. 69, Sec. 2, p. 301 this volume, makes the time for registration from 8 o'clock a. m. till 7 o'clock p. m., with an intermission of from 12 to 1 o'clock. The time mentioned in Sec. 3 of the above Act is correct as to *revision* of registration.

2. This referred to a column, "Sworn." There is none in the Act of May 27, 1898, 21 D. L. p. 70, Sec. 4 (pp. 303-304-305 of this volume), nor in the Act of May 20, 1898, 21 D. L. at pp. 66 and 67, Sec. 3. (pp. 323-324-325 of this volume.)

3. The above referred to "Color." The Act of March 14, 1901, 22 D. L. p. 111, Sec. 1, says: "hereafter such Registers shall not contain columns for entries as to color," p. 326 of this volume.

The same entries are found in the Act of May 20, 1898, 21 D. L. Sec. 3 at pp. 66 and 67, p. 323 et seq of this volume.

4. See notes to the different sections of this Act.

5. See said above notes.

Proviso.

provided, that if, upon examination, as in this Act provided for, of any applicant for registration it shall appear that he has, since the last day of any general registration of voters or revision thereof in the said City of Wilmington, moved into or become a resident of said election district, the said inspectors shall inquire from whence such applicant removed or came; and if it shall appear that such removal was from a place within the said city or State, they shall inquire if, in the election district in which he resided at the time of the last preceding general registration (naming such time), or in which he has resided at any time subsequent thereto, he has been registered, or has applied for registration; and if he state that he has not, then the said inspectors shall proceed with said application as with that of any other person who may apply to them, but if he shall state that he has been so registered, the said inspectors shall, before further proceeding, require him to present to them a certificate of removal[1] as provided for in this Act, so that his name shall not be upon the registers of two election districts, and upon the presentation to any Board of Inspectors of any certificate of removal, the said board shall treat the person presenting the same in the manner provided in subdivision 4 of Section 4 of this Act for applicants for registration.[2]

Removal of voter from registration district.

SEC. 6.[3] Any person who shall at any time, as provided in this Act, have applied to the inspectors of election in any election district of said City of Wilmington for registration and shall have, in the registers thereof, been entered as a qualified voter, and who shall, at any time prior to the close of any revision of registration, have removed from the dwelling place under which he shall as a resident be borne upon the registers, may, upon any day provided in this Act for meetings of the inspectors of election other than the day of any

1. As to removal, and the obtaining of a Certificate of Removal, see Act May 27, 1898, 21 D. L. p. 75, Sec. 8, p. 309 of this volume.

2. As to the references in this section to "sub-division 4 of Sec. 4," see notes on pp. 278 and 279 of this Act.

3. On the subject of Removal, &c., see Act May 27, 1898, 21 D. L. at p. 75, Sec. 8, p. 309 of this volume.

election, personally appear before the said inspectors in the election district in which he resided at the time his name was entered upon the said registers, during the hours in this Act provided for their sessions for such revision, and, if challenged, shall publicly take and subscribe before one of said inspectors the following oath or affirmation, which shall be known as an oath of removal:

Oath of voter removing.

"I, ———— residing in the ———— election district of the City of Wilmington, do solemnly swear (or affirm) that I, duly entered in the registers of said election district from said residence as a qualified voter, have removed my place of residence to number ———— in the ———— election district of the City of Wilmington, and I do hereby request that the proper entries be made as the same are provided for by law, and that a certificate of removal be furnished me at this time."

Duty of Inspector in case of removal.

Upon such oath or affirmation being made and subscribed as herein provided, it shall be the duty of the said inspectors to carefully preserve the same. And upon such application, (or in case of challenge) upon any such person so taking and subscribing said oath of removal, the said inspectors of election, if satisfied of the identity of the person making the same with the person he claims to be as the description of said last mentioned person shall appear on the register, and if not satisfied therewith shall at once, by any one whom said board shall specially authorize, make an examination and inquiry at the place of residence of such person, as the same shall be entered upon the registers, as to the fact of the removal of such person from said dwelling place, when, if his removal therefrom shall be found by the report of such person to be a fact, shall immediately proceed to strike from said registers the name of such person by entering in each of the registers, opposite to * * * * * *[1] and in the column headed

1. The provisions stricken out of the above section referred to "Why Disqualified," "Removed" and "Dates of Erasing Name." They do not appear in either of the Acts of May 20, 1898, 21 D. L. at p. 66. Sec. 3 et seq or May 27, 1898, 21 D. L. p. 70, Sec. 4 et seq., and are inconsistent with the provisions of both of said Acts. (See pp. 323-324-325, and 303-304-305 respectively, of this volume.)

"Remarks," the words "Transferred to,"[1] together with the number of the election district to which such person shall in his oath of removal state he has removed, and the initial letters of the name of the inspector who shall in each of said registers make such entries; and shall, through the name of any such person as the same shall appear on said registers, and there only draw a line as indicative that such name is erased from the registers of that election district, and the name of any such person so found stricken and erased from said registers shall, as to his name and residence at the place in said registers entered under the column of "Residence," be thereafter considered by the Department of Elections, all inspectors of election and all other election officers, to be stricken from the registers of that election district and shall be treated as if never entered thereon. If the dwelling place to which any such person shall have removed be within the boundaries of the same election district as was his former residence, as stated in the registers of said election district, the said inspector shall in said registers, under the number or other description of the dwelling place to which such person has removed, enter his name, and in the several columns opposite and against the same, such words and figures as prior to the striking from or erasing the name of such person in the manner in this section above provided, where in the columns similarly headed and opposite to and against the name of each person as upon said registers it appeared under the dwelling place from which he shall have declared he has removed; and if the dwelling place to which any such person shall have removed shall be within the boundaries of any other election district than was the residence under which he was previously entered on said registers, the said inspectors of election shall fill up, sign and deliver to such person a certificate which shall be known as a certificate of removal, and shall be in the words and figures following, to wit:

1. The entry prescribed by the Act of May 27, 1898, 21 D. L. at p. 76, Sec. 8 is "removed from this election district into * * * election district in this county," (p. 309 of this volume).

"CERTIFICATE OF REMOVAL.

Certificate of removal.

"Polling place of the ———— election district in the City of Wilmington, ———— 19—.

"To the board of inspectors of election ———— election district: This is to certify that the name of ———— heretofore residing at ———— in this election district, has been by us, the inspectors of election in this district, stricken from the registers of this district and the proper erasures made upon the oath[1] of removal, and at the request of said above-mentioned person, and that upon the registers of this election district were entered as to him the following statement:

Name	* * *.....	Repealed, Act March 14, 1901, 22 D. L. p. 111, Sec. 1.
Residence	Term of Residence	
Sworn[2]	State	
Nativity	County	
	Naturalized	
	Date of Application .....[3]	

———— ————
———— ————
———— ————"

SEC. 7. * * * * * * * * * * Repealed, Art. V. Sec. 2. Constitution 1897.

SEC. 8.[4] * * * * * * * * * *

SEC. 9.[5] * * * * * * * * * *

1. The oath is only required in case of challenge. See above section.

2. Only used when challenged. See the section itself.

3. The blanks now used (which are copies of what are contained in the "Registers,") also contain the following: Age, Election District, Registered Voter, Color. See Act May 20, 1898, 21 D. L. pp. 66 and 67, Sec. 3, I "First" and "Second." p. 323-324 of this volume. The color is entered in the "Book of Registered Voters," but not in the *Registers*. Act of May 27, 1898, 21 D. L. p. 74, Sec. 6, p. 307 of this volume. See also p. 325, Act of March 14, 1901, 22 D. L. p. 111, Sec. 1, p. 326 of this volume.

4. This section referred to the duty of inspectors at the close of each day of registration to fill out and sign a certificate as to persons registered. This is supplied by Act of May 27, 1898, 21 D. L. at 73, Sec. 4 Fifth, p. 306 of this volume. And at the close of their last sitting the registration officers perform the duties set out in Sec. 10, (II and III) of the above Act, pp. 76 and 77, (pp. 310-311 of this volume.)

5. See Act May 27, 1898, 21 D. L. 76, Sec. 10 (II and III,) pp. 310-311 of this volume), and also pp. 83 and 84 of the same Act, Secs. 17 and 19, which provide that the Registration officers shall keep the books till the day of the election, when one set of books is delivered to Inspector of election, and the other set is kept by the Registrar.)pp. 315-316 of this volume.)

SEC. 10.[1] * * * * * * * * * *

SEC. 11.[2] * * * * * * * * * *

Challenges.

SEC. 12.[3] Any person applying to register or offering to vote, or who is registered, may, on any day of registration or of election, be challenged by any qualified voter in the city, and any one of the inspectors of election in any election district in the City of Wilmington may at any such time or times, and one of them shall administer to any person so challenged the following oath or affirmation:

* * * * * * * * * * * *

Challenges.

SEC. 13. Any person who is a qualified voter in the city may, upon the day of registration or of election, require the name of any registered person to be marked for challenge, and on such day or days shall be entitled to be heard by the inspectors of election in any election district in relation to the correctness of their registers.[4]

Party challengers.

SEC. 14.[5] At every election held under the provisions of this Act each political party shall have the right to designate, place and keep a challenger at each place of registration and voting, who shall be assigned such position immediately ad-

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1. See above Act, 21 D. L. at pp. 76 and 77, Sec. 10, where it provides that the Registration officers immediately after the close of their last sitting, shall make a comparison of the registration books. (p. 310 of this volume.)

2. This section referred to the Inspectors of election having the "registers" with them on election day, and the method of voting with a stamp and tax receipt, &c. See Act May 27, 1898, 21 D. L. p. 84, Sec. 19. This section requires the Registrar on election day one hour before the polls open, to deliver to the Inspector of election 1 "Register" and 1 "Book of Registered Voters." The other set he keeps himself until after the election, when, by virtue of Sec. 19, II, of the same Act he delivers it to the Clerk of the Peace, p. 316 of this volume. See Act June 1, 1898, 21 D. L. at 118, Sec. 18 as to method of voting in lieu of that provided for in the above Sec. 11. See Act May 20, 1897, 20 D. L. p. 403, Sec. 2, (p. 388 of this volume.) See Act May 15, 1891, 19 D. L. p. 94, Sec. 19, (p. 379 of this volume.)

3. See Act May 15, 1891, 19 D. L. p. 94, Sec. 17, (p. 379 of this volume) and Act May 20, 1897, 20 D. L. p. 404, Sec. 3, (p. 388 of this volume.)

See Act May 27, 1898, 21 D. L. at p. 73, Sec. 5, challenge for bribery of one desiring to register, and oath to be taken; p. 306 of this volume; and see Act June 1, 1898, 21 D. L. pp. 118-119, Sec. 19 of similar challenge of one desiring to vote and oath to be taken.

By Act June 1, 1898, 21 D. L. 132, Sec. 29, the Inspector of election on the day after the election delivers oaths, affirmations, &c., Registers, and Books of Registered Voters to the Clerk of the Peace. The same are open to public inspection, &c.

4. See note to Secs. 12 and 14 of this Act.

5. See note to Sec. 12 of this Act.

See Act May 20, 1897, 20 D. L. p. 404, Sec. 3, p. 388 this volume, which provides that the clerks of the election shall be challengers, and the clerks are named by the Judges of election. See Act June 1, 1898, 21 D. L. p. 116, Sec. 13.

joining the inspectors of election and upon the inside of the window[1] as will enable him to see each person as he offers to register or to vote, and who shall be protected in the discharge of his duty by the inspectors of election. Each political party may remove any challenger appointed by it, and all vacancies which from any cause shall arise shall be filled by the same party, power and authority as conferred the original appointment. Removal or vacancies of challengers.

SEC. 15. The poll clerks at each poll in any such city shall keep in ink a poll list in books, to be prepared and furnished for that purpose, which shall contain a column headed "Name of Voter," a column headed "Residence," and a column headed "Remarks." Duty of poll clerks.

SEC. 16. The poll books referred to in the preceding section shall be in the form as follows: Poll books.

Form of poll books.

ELECTION DISTRICT.

RESIDENCE.	NAME OF VOTER.	REMARKS.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

The name of each elector voting shall be entered by each poll clerk in the column of his poll list headed "Name of Voter," and the residence of each such elector in the column headed "Residence," and in the column of "Remarks," opposite the name of each person challenged, shall be noted the oath or oaths offered and taken by any such person. Entries in poll books.

1. See note to Sec. 2 of Act of May 15, 1891, 19 D. L. p. 86; p. 370 of this volume.

SEC. 17.[1] * * * * * * * * * *

SEC. 18.[2] * * * * * * * * * *

Absence of inspectors, how remedied.

Absence of clerks.

SEC. 19. If at the time for opening any registration, revision of registration or any election, the inspectors or a majority of them be not present at the place of registration or election, the voters there may without ballot by plurality choose a person to supply the place of every such absent inspector,[3] but the inspector or inspectors so chosen shall be of the same political faith and opinion as the person or persons for whose place or places he or they may be chosen to fill; and if, at the time aforesaid, either or both of the poll clerks be not present at the place of election, the inspectors shall choose the person or persons to fill the place or places of such absent clerk or clerks;[4] *provided*, that the person or persons so chosen shall be of the same political faith and opinion as the person or persons for whose place or places he or they may be chosen to fill. When any person shall be chosen to fill the place of an absent inspector or poll clerk he shall before entering upon his duties take and subscribe the oath as provided in Section 3 (*a*) of this Act; and a blank form of said oath shall be printed or written in the back of the register provided to be furnished to the inspectors of election under this Act. * * * * * * * *

Proviso.

Persons appointed to fill vacancies.

What shall constitute a vacancy.

(*a*) See note "a" to Sec. 3 (10), of this Act.

Placing of ballot box.

SEC. 20. Every ballot box shall be so placed at a window

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1. This section provided for a column with the word "Voted" in it, and the inspectors of election were required to fill it up with the words "Yes" or "No." The Acts of May 20, 1898, 21 D. L. p. 66, Sec. 3, and May 27, 1898, 21 D. L. p. 70, Sec. 4 omit it. pp. 323-325 and 303-305 respectively of this volume. The Act of June 1, 1898, 21 D. L. at p. 118, Sec. 18, requires the word "Voted" to be written opposite the name in the Book of Registered Voters.

2. The above section referred to the canvas of the vote. This is done by the Superior Court of the county. See Act June 1, 1898, 21 D. L. p. 122, Sec. 23.

3. The Act of June 1, 1898, 21 D. L. p. 114, Sec. 9 provides that if the inspector be not present, the registrar shall shall serve as inspector; if he be absent the alternate registrar shall act.

In Wilmington the Department of Elections appoints all election officers. Act June 1, 1898, 21 D. L. p. 146, (p. 337 of this volume.) And the Department appoints all registration officers. Act May 20, 1898, 21 D. L. p. 142, Sec. 3 part VII, p. 333 of this volume.

4. The judges appoint the clerks. Act June 1, 1898, 21 D. L. p. 116, Sec. 13.

or elsewhere that the voters depositing any ballot and each challenger may conveniently see every ballot received by the inspectors and deposited in the ballot box. No screen or other obstruction to such view of any ballot box by the voter or challenger shall be allowed. Screens.

SEC. 21.[1] * * * * * * * * * *

SEC. 22. No person who is registered in one election district shall register or cause himself to be registered in another district.[2] (*a*) Registering more than once.

(*a*) This Section and Sec. 33 are alike in some respects. See Sec. 33 "a."

Lore, C. J.: "Reference has been made to Sec. 22, which covers, practically, the same thing. These provisions overlap each other," &c. The Court was referring to Secs. 33 and 22.

State vs. Lally, 2 Marv. 424 at 425. (yr. 1895)

SEC. 23. For all power, authority and duties in this Act prescribed for or conferred upon and all actions required of inspectors of election, save where such authority or action is specifically allowed to any of said inspectors, the concurrence or assent of a majority of all the inspectors of election in any election district must in all cases be obtained.[3] Majority of inspectors must concur in all actions, etc.

SEC. 24. No person shall be required to serve as an inspector of election for two successive terms. Inspector required to serve but one term.

SEC. 25. The several inspectors of election, and poll clerks,[4] in this Act named and created are and shall be in all courts and proceedings deemed and held respectively to be election officers; and it shall be the duty of the said inspectors of election and poll clerks, respectively, or a majority of said Election officers.

1. This section gave the Department of Elections authority to rent a suitable place for use by the Department.

It is supplied, verbatim, by the Act of May 20, 1898, 21 D. L. at p. 144, Sec. 5, p. 336 this volume.

2. See Sec. 33 of this Act.

3. See also Act May 27, 1898, 21 D. L. p. 76, Sec. 9, p. 310 of this volume; see Sec. 50 of this Act, p. 300.

4. The judges name the clerks, not the Department of Elections. See note 4 to Sec. 19 of this Act, p. 286.

Attendance of election officers.

inspectors, to be in constant attendance during the hours and times fixed for the discharge of their several duties.

Duty of election officers to make canvass of election district.

SEC. 26. Any inspector of election, poll clerk[1] or any challenger, appointed in compliance with the provisions of this Act, shall at any time between the first day of registration or revision of registration, as required by this Act, preceding any election and ten days after the official declaration and certificate of the result of any such election, have full power and authority to make a thorough and effective canvass of the election district in and for which he has been or was designated to serve and act upon any day of registration, or revision of registration or election, and to make full inquiry respecting any and every resident of any dwelling, building or other place of abode in any such election district, his age, term of residence and qualifications as a voter; but the power and authority by this section conferred upon any inspector of election, poll clerk or challenger, shall wholly cease upon his resignation or removal from the office or position to which he was appointed or for which he was designated.

Powers and duties of inspector of election while holding election.

SEC. 27. The inspectors of election in each election district, while discharging any of the duties imposed upon them by this Act, shall have full authority to preserve order and enforce obedience to their lawful commands at and around the place of registration[2] or election during the time of any registration or revision of registration, election or canvass, estimate or return of votes, to keep the access to such places open and unobstructed; to prevent and suppress riots, tumult, violence, disorder and all improper practices tending to the intimidation or obstruction of voters, the disturbance or interruption of the work of registration or voting, or the canvass estimate or return of votes, and to protect the voters and challengers from intimidation and violence, and the registers, poll books, boxes (a) and ballots from violence and fraud, and to deputize

1. See note 4 on p. 287 of this volume.

2. For similar powers of the registrars, see Act May 27, 1898, 21 D. L. p. 85, Sec. 20. p. 316 of this volume.

if necessary one or more electors to communicate their orders and directions and to assist in the enforcement thereof.

(*a*) *Spruance, J.*: "It was the duty of the election officers to keep safely the ballot boxes, and to repel any attempt to capture them; and it was lawful for them to use such amount of force as was necessary for that purpose. The inspector did resist the assailants, and finally repulsed them, and in so doing fired several shots," killing one person.
State vs. Bell, 5 Penn. 192 at 195. (yr. 1904)
State vs. Brand, 2 Marv. 459 at 461. (yr. 1897)

Compensation of members of Department of Elections, how paid.

SEC. 28. The legal compensation of all members of the Department of Elections shall be paid quarterly on the last day of March, June, September and December by the State Treasurer out of any money belonging to the State not otherwise appropriated.[1] The compensation of inspectors of election, poll clerks and other officers of election, as provided for by this Act,[2] the cost and expenses of all necessary election notices, posters, maps, advertisements, registers, books, blanks, stationery, the rent and cost of fitting up, warming, lighting, cleaning and safe keeping of all places of registration and polling places; of furnishing, repairing and carting ballot boxes, and the cost of all supplies of every kind and nature for elections in said city shall be paid as other general election expenses are, and upon proper warrants and vouchers made by the Department of Elections.

Compensation of other officers and necessary expenses, how paid.

Duty of city surveyor.

SEC. 29. It shall be the duty of the city surveyor to furnish to the Department of Elections of said city upon their request a map or maps of the several wards of the city or any and all portions thereof.

Change of number or name of streets, etc.

SEC. 30. Hereafter it shall not be lawful for any of the authorities, officers or agents of the said City of Wilmington to number or re-number or change the name of any street, avenue, lane, road or way in the said city, or in anywise change or alter any such number or name, save between the first day of July and the last day of August of any year.

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1. Supplied verbatim in Act May 20, 1898, 21 D. L. at p. 145, Sec. 6. (p. 336 of this volume.)
2. See Sec. 3 (10) note 3 of this Act, (p. 277 of this volume.)

Electioneering or engaging in political discussion.

SEC. 31. It shall be unlawful for any inspector of election, poll clerk or challenger during the election or canvass of ballots, or any person or persons within the polling place, to electioneer or engage in any political discussion. Any violation of this section shall be a misdemeanor, and shall be punished by imprisonment in the county jail for not more than ninety days or by fine not more than two hundred dollars or both.

Penalty.

Intoxicating and spirituous liquors.

SEC. 32. Whoever, during the sitting of any Board of Inspectors of Election in any election district in the city, whether held for the purpose of registration, revision of registration, reception or canvass of votes, or of making return thereof, shall bring, take, order or send into, or shall attempt to bring, take or send into any place of registration, revision of registration or of election any distilled or spirituous liquors whatever, or shall at any such time or place drink or partake of any such liquor, shall be deemed and held to be guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for not more than ninety days, or by a fine of not more than one hundred dollars or both.[1]

Penalty.

Personation.

SEC. 33. If, at any registration or revision of registration of voters, or at any meeting of inspectors of election held for such purpose, as provided in this Act, any person shall falsely personate an elector or other person and register or attempt or offer to register in the name of such elector or other person, or if any person shall knowingly or fraudulently register or offer or attempt to make application to register in or under the name of any person, or in or under any false, assumed or fictitious name, or in or under any name not his own, or shall knowingly or fraudulently register in two election districts, (*a*) or having registered in one district shall fraudulently attempt to offer to register in another, or shall fraudulently register or attempt or offer to register in any election district not having a lawful right to register therein, (*b*) or shall knowingly or willfully do any unlawful act to secure registration for himself or

Registry in wrong district or in more than one.

1. Supplied verbatim by Act of May 27, 1898, 21 D. L. at p. 86, Sec. 22, (p. 318 of this volume). See also p. 397 of this volume.

any other person, or shall knowingly, willfully or fraudulently by false personation or otherwise or by any unlawful means procure or attempt to cause or procure the name of any qualified voter in any election district to be erased or stricken from any register of the voters of such district made in pursuance of this Act or otherwise than in this Act provided; or by force, threat, menace, intimidation, bribery, reward or offer (*c*) or promise thereof or other unlawful means prevent, hinder or delay any person having a lawful right to register or be registered from duly exercising such right, or who shall knowingly, willfully or fraudulently compel or induce or attempt or offer to compel or induce by such means, or any unlawful means, any inspector of election or officer of registration in any election district to register or admit to registration any person not lawfully entitled to registration in such district, or to register any false, assumed or fictitious name or any name of any person except as provided in this Act, or shall knowingly or willfully or fraudulently interfere with, hinder or delay any inspector of election or other officer of registration in the discharge of his duties, or counsel, advise or induce or attempt to induce any such inspector or other officer to refuse or neglect to comply with or to perform his duties or to violate any law prescribing or regulating the same, or shall aid, counsel, procure or advise any voter, person, inspector of election or other officer of registration to do any act by law forbidden or in this Act constituted an offense or to omit to do any act by law directed to be done; every such person shall upon conviction thereof be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the county jail not more than two years or by fine not more than two hundred dollars or both.[1]

Intimidation.

Intimidation or interference with election officer.

Penalty.

(*a*) *Cullen, J.*: "The last clause,—"Or shall knowingly or fraudulently register in two election districts," is the one under which the defendant in this case is indicted." (557) * *

"It is no defence to say that a man was told so and so, for the ignorance of the law excuses no man. We are all bound by the law, whether we know it or not. * * The act says, and we so construe the act, that

1. See Act May 27, 1898, 21 D. L. at 87, Sec. 24, covering the same matters, but with imprisonment not exceeding three years, and fine not exceeding five hundred dollars, or both in the discretion of the Court. (p. 320 of this volume.)

where a party knowingly registers twice, and those facts are clearly proved to the jury beyond a reasonable doubt, then the party is beyond all question guilty in manner and form as he stands indicted.''

State vs. Caldwell, 1 Marv. 555 at 559 (yr. 1895)

(The above section is set out in the above case, to where the note ''a'' is made.)

The same question came up before the Court a second time in the case below cited, and the Court said:

Marvel, J.: ''So, in this instance, it is not a question of intent, but has the defendant * * registered in two election districts in the said City of Wilmington?'' If so, he was guilty.

State vs. Lally, 2 Marv. 424 at 428. (yr. 1895)

(*b*) An indictment that one, ''at a certain general registration of all the qualified voters, unlawfully and fraudulently registered * * not having a lawful right to register therein,'' is fatally defective. It is too general. (Syllabus 560.)

Lore, C. J.: ''The elements of the fraud are manifold. * * He is entitled to have the fact set forth, and not be compelled to come here to meet some one of a dozen, or more, qualifications, which are necessary under our present statute to qualify him to register.''

State vs. Vincent, 1 Marv. 560 at 562. (yr. 1895)

(*c*) See Sec. 34 ''a'' as to the difference between ''offering'' and ''promising'' a reward, &c.

Personation of voters.

Sec. 34. If at any election hereafter held in the said city as provided in this Act any person shall falsely personate any elector or other person, and vote or attempt or offer to vote in or upon the name of such elector or other person, or shall vote or attempt to vote in or upon the name of any person whether living or dead, or in or upon any false, assumed or fictitious name, or in or upon any name not his own, or shall knowingly, willfully or fraudulently vote more than once for any candidate for the same office, or shall vote or attempt or offer to vote in any election district without having a lawful right to vote therein, or to vote more than once or to vote in more than one election district, or having once voted shall vote or attempt or offer to vote again, or shall knowingly, willfully or fraudulently do any unlawful act to secure an opportunity for himself or for any other person to vote, or shall by force, threat, menace, intimidation, bribery or reward or offer (*a*) or promise thereof or otherwise unlawfully, either directly or indirectly, influence or attempt to influence any elector in giving his vote, or prevent or hinder or attempt to prevent or hinder any qualified voter from freely exercising the rights of suffrage or by any such means induce or attempt to induce any such voter to refuse to exercise any such right, or shall by any such means

Fraudulent voting.

Intimidation and bribery.

or otherwise compel or induce or attempt to compel or induce any inspector of election or other officer of election in any election district to receive the vote of any person not legally qualified or entitled to vote at the said election in such district, or shall knowingly, willfully or fraudulently interfere with, delay or hinder in any manner any inspector of election, poll clerk or other officer of election in the discharge of his duty, or by any of such means or other unlawful means knowingly, willfully or fraudulently counsel, advise, induce or attempt to induce any inspector of election, poll clerk or other officer of election whose duty it is to ascertain, proclaim, announce or declare the result of any such election, or to give or make any certificate, document, report, return or other evidence in relation thereto, to refuse or neglect to comply with his duty, or to violate any law regulating the same, or to receive the vote of any person in any election district not entitled to vote therein, or to refuse to receive the vote of any person entitled to vote therein, or shall aid, counsel or advise, procure or assist any voter, person or inspector of election or other officer of election to do any act by law forbidden or in this Act constituted an offense, or to omit to do any act by law directed to be done, every such person shall upon conviction thereof be adjudged guilty of a misdemeanor and shall be punished for each and every offense by imprisonment in the county jail for not more than two years or by a fine of not more than two hundred dollars or both.[1] Penalty.

(*a*) The meaning of the words "offer" and "promise" are given below.

Booth, C. J.: "the argument for the defendant assumes that to offer a reward, or to promise a reward, means the same thing. But there is a clear and distinct meaning to be attached to each of the words * * "offer," "promise," * * as used in the two acts. To "offer" it, is to present it for acceptance or rejection; to "promise" it, is to make a declaration or engagement that it shall be given," &c. (The meaning of "give" and "procure" is also given.)

State vs. Harker, 4 Har. 559 at 561. (yr. 1847)

SEC. 35. If any poll clerk or inspector of election performing the duty of poll clerk shall willfully keep a false poll Poll clerks making false entries.

1. See Act April 6, 1893, 19 D. L. p. 986, Sec. 7, Municipal Election Law, pp. 400-401 of this volume; and see Act May 27, 1897, 20 D. L. p. 387, Sec. 22, Primary Election Law, p. 356 of this volume.

list, or shall knowingly insert in his poll list any false statement or any name or statement or any check, letter or mark except as in this Act provided, he shall upon conviction thereof be adjudged guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than two years or by a fine of not more than two hundred dollars or both.

Penalty.

Failure of inspector to perform his duty.

SEC. 36. Every inspector of election who shall willfully exclude (*a*) any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at such election, or shall willfully receive (*b*) a vote from any person who has been duly challenged in relation to his right to vote at such election without exacting from such person such oath or other proof of qualification as may be required by law, or who shall willfully omit to challenge any person offering to vote, whom he knows or suspects not to be entitled to vote, and who has not been challenged by any other person, shall upon conviction thereof be adjudged guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than two years or by a fine of not more than two hundred dollars or both.

Penalty.

(*a*) An inspector of election was indicted "for refusing a legal vote." The case seemed to depend upon the guilty knowledge of the election officer, and the Court said:

By the Court: "It is difficult to define corruption; but we may say, that it is the wilfully and corruptly doing an act, or omitting a duty, which a person, acting in a public capacity, *knows* it to be his duty to do, or omit, in disregard of his official duty, and the obligations of his oath."

State vs. Porter, 4 Har. 556 at 557. (yr. 1847)

(*b*) "The indictment was against the defendant as presiding officer of an election, for knowingly and wilfully taking an illegal vote." (555). It was a question of residence.

By the Court: "Did defendant take the vote knowing it to be an illegal vote? Defendant acted in a judicial capacity, and is not to be held liable criminally for a mere error in judgment. * * But if such officer, knowing a vote to be illegal, takes it corruptly, his position cannot protect him from the just punishment of his offence."

State vs. M'Donald, 4 Har. 555 at 556. (yr. 1847)

State vs. Frest, 4 Har. 558. (yr. 1847)

Election officers making false canvass or entries, etc.

SEC. 37. Every inspector of election, member of the Department of Elections, poll clerk or other officer authorized to take part in or perform any duty in relation to any canvass or official statement of the votes cast at any election, who shall willfully make any false canvass (*a*) of such votes or shall

make, sign, publish or deliver any false returns (*b*) of such election, or any false certificate (*c*) or statement of the result of such election, knowing the same to be false, or who shall willfully deface, (*d*) destroy or conceal any statement or certificate intrusted to his care or custody, shall on conviction thereof be adjudged guilty of amisdemeanor and shall be punished by imprisonment in the county jail not more than two years or by a fine of not more than two hundred dollars or both. Penalty.

(*a*) See the case of State vs. Matlack et al, 5 Penn. 401 (yr. 1905), where, among other things, it was charged that votes cast for one candidate, were read and counted for another candidate.

(*b*) *Lore, C. J.*: "The offence designated under the statute is "a false return of the election." In the indictment the charge is "making a false return of the number of ballots cast at said election," which would be an element of the false return." The indictment was therefore quashed. Sec. 37 of the act is referred to on p. 454.
State vs. Conway, 2 Marv. 453 at 455. (yr. 1896)

(*c*) "The prosecution was under Secs. 37 and 40 of the Act of 1891," (p. 457). "As to the indictment under Sec. 37 the word "publish" refers to the certificate of election made by the Board of Canvass,"—(457) (attorney's contention.) The Court held in an indictment "for publishing a false certificate of the result of an election." * it is sufficiently certain to allege that the defendant "did then and there wilfully and unlawfully publish a false certificate of the result of said election by then and there making a false return to the Board of Canvass, &c., of the number of votes given at said election;" and also, did "wilfully, fraudulently and unlawfully make an alteration in said certificate of election by then and there changing the number of votes given at said election," &c.
State vs. Clark, 2 Marv. 456. (yr. 1896) syllabus.

(*d*) See the case of State vs. Brand, 2 Marv. 459. See Sec. 40 "a" of this Act.

SEC. 38. If any person other than inspector of election shall at any election knowingly and willfully put or cause to be put any ballot or ballots or other paper having the semblance thereof into any box used at such election for the reception of votes, or if any such inspector shall knowingly and wilfully cause or permit any ballot to be in said box at the opening of the polls and before voting shall have commenced, or shall knowingly or wilfully or fraudulently put any ballot or other paper having the semblance thereof into any such box at any such election, unless the same shall be offered by an elector and his name shall have been found and checked upon the registers as hereinbefore provided, or if any such inspector Fraudulent voting by inspectors, etc.

or other officer, or person shall fraudulently before, during or after the canvass of ballots in any manner change, substitute or alter any ballot, or shall remove any ballot or semblance thereof from, or add any ballot or semblance thereof to the ballots found in any box upon the closing of the polls, every such person shall upon conviction thereof be adjudged guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than two years or by a fine of not more than two hundred dollars or both.

Penalty.

Willful neglect of duty by election officers.

SEC. 39. If any member of the Department of Elections, any inspector of election, poll clerk or other officer of registration, election or canvass, of whom any duty is required in this Act or by the general election laws of this State (so far as the same are consistent with the provisions of this Act), shall be guilty of any willful neglect of such duty, of any corrupt or fraudulent conduct or practice in the execution of the same, he shall on conviction thereof be adjudged guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than two years or by a fine of not more than two hundred dollars or both.[1]

Penalty.

Stealing or secreting records, registers, etc.

SEC. 40. Every inspector of election, poll clerk or other officer or person having the custody of any record, register of votes or copy thereof, oath, return of votes, certificate, poll list or any paper, document or evidence of any description in this Act directed to be made, filed or preserved, who is guilty of stealing, willfully destroying, mutilating, defacing, falsifying or fraudulently removing or secreting the whole or any part thereof, or who shall fraudulently make any entry, erasure or alteration (a) therein, except as allowed and directed by the provisions of this Act, or who permits any other person to do so shall upon conviction thereof be adjudged guilty of a misdemeanor and shall be punished for each and every such offense by imprisonment in the county jail not exceeding two years or by a fine of not more than two hundred dollars or both.[2]

Penalty.

(a) This section is set out verbatim in the case below cited.
Lore, C. J.: "Under the statutes of this State" the "inspector * * was the custodian of the ballot box, with the

1. See Act May 20, 1898, 21 D. L. at p. 145, Sec. 7, covering the same matters as to the Department of Elections, (p. 336 of this volume.)

2. See Act May 27, 1897, 20 D. L. p. 384, Sec. 16, Primary Election Law, (p. 351 of this volume.)

ballots'' and * * ''one certificate of election deposited therein,''— * * &c. (461). ''Under the statute'' he ''would be liable, if he either made the alteration himself, or by his negligence, *permitted* another to make it.''

State vs. Brand, 2 Marv. 459 at 462. (yr. 1897)
State vs. Clark, 2 Marv. 456. (yr. 1896)

Abetting offenses named in Sec. 40.

SEC. 41. Every person not an officer, such as is mentioned in the last preceding section, who is guilty of any of the acts specified in said section or who advises, procures, or abets the commission of the same, or any of them, shall upon conviction thereof be adjudged guilty of a misdemeanor and for each and every such offense shall be punished by imprisonment in the county jail not exceeding two years or by a fine of not more than two hundred dollars or both.

Penalty.

Perjury.

SEC. 42. Any person who shall be convicted of willful false swearing or affirming in taking any oath or affirmation prescribed by or upon any examination provided for in this Act shall be adjudged guilty of perjury.

Subornation of perjury.

SEC. 43. Every person who shall willfully or corruptly instigate, advise, induce or procure any person to swear or affirm falsely as aforesaid, or attempt or offer so to do, shall be adjudged guilty of subornation of perjury, and shall upon conviction thereof suffer the punishment directed by law in cases of perjury.

Tampering with ballots and voters.

SEC. 44. If any person shall fraudulently change or alter the ballot of any elector, or substitute one ballot for another, or fraudulently furnish any elector with a ballot containing more than the proper number of names, or shall intentionally practise any fraud upon any elector to induce him to deposit a ballot as his vote and to have the same thrown out and not counted, or to have the same counted for a person or candidate other than the person or candidate for whom such elector intended to vote, or otherwise defraud him of his vote, every such person shall upon conviction thereof be adjudged guilty

of a misdemeanor and shall be punished by imprisonment in the county jail for not more than two years or by a fine of not more than two hundred dollars or both.

Disobeying inspectors.

SEC. 45. If any person shall willfully disobey any lawful command of any inspector of election or of any board of inspectors of election, given in the execution of his or their duty as such at any election, he shall upon conviction thereof be adjudged guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than two hundred dollars or both. [And if any policeman or officer of police of the City of Wilmington willfully disobey any lawful command of any board of inspectors of election in the exercise of their duty as such at any election as aforesaid, and upon conviction thereof by the Municipal Court of the City of Wilmington, he shall in addition to the punishment by this Act imposed, forfeit his office or position upon the police force and be ineligible for a period of one year.]

Penalty.

Amendment, Act of April 13, 1893.

Police, duties of.

Penalty.

Breach of peace, violence, threats, etc.

SEC. 46. If at any registration or revision of registration of voters, or on any day of election, or during the canvass of the votes cast thereat, any person shall cause any breach of the peace or use any violence or threats of violence, whereby any such registration, revision of registration, election or canvass shall be impeded or hindered, or whereby the lawful proceedings of any inspector of election, or board of inspectors of election, or poll clerk or other officer of such election, or challenger, as hereinbefore provided, are interfered with, every such person shall upon conviction thereof be adjudged guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than two years or by a fine of not more than two hundred dollars or both.[1]

Penalty.

Obstruction, bribery and assault.

SEC. 47.[2] If any person shall knowingly or willfully obstruct, hinder, assault (a) or by bribery, solicitation or otherwise interfere with any inspector of election, poll clerk or chal-

1. See Act May 27, 1898, 21 D. L. p. 87, Sec. 24, (p. 319 of this volume.)

2. See Sec. 33 of above Act, p. 290.

lenger in the performance of any duty required of him or which he may by law be authorized or permitted to perform; or if any person by any other means before mentioned or otherwise unlawfully, shall on the day of registration, revision of registration, or of election, hinder or prevent any inspector of election, poll clerk or challenger in his free attendance and presence at the place of registration or of election in the election district in and for which he is appointed to serve, or in his full and free access and egress to and from any such place of registration or election, or to and from any room where any such registration or election, or canvass of votes, or of making any returns or certificates thereof, may be had, or shall molest, interfere with, remove or eject from any such place of registration, or poll of election, or of canvassing ballots cast thereat, or of making the returns or certificates thereof, any such inspector of election, poll clerk or challenger, or shall unlawfully threaten or attempt or offer so to do, every such person shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than two years or by a fine of not more than two hundred dollars or both. Penalty.

(*a*) The defendant was indicted and tried in the Court of General Sessions for an assault and battery upon an inspector of election in Wilmington, at an election held for members of the Board of Education. That act provided that the registration, election, &c., should be held in conformity with the provisions of the election and registration laws governing general elections. "The effect of this provision was to incorporate certain provisions of Chap. 39, Vol. 19, Laws of Del., Sec. 47, of which, reads as follows," (526) &c. (The section is partly set out.) The Court held the Municipal Court had exclusive jurisdiction, and said:

Lore, C. J.: "You describe the party as an election officer in the City of Wilmington. * * This is an assault, and we think the jurisdiction extends not only to common law assaults, but to any assault created by statute, unless the Municipal Court was distinctly ousted by express terms."

State vs. Anderson, 1 Marv. 526 at 527. (yr. 1893)

SEC. 48. Any inspector of election who shall willfully neglect or when called on shall willfully decline to exercise the powers conferred on him in this Act, for any of the purposes set forth in Section 27 of this Act, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than two hundred dollars or both. Neglect or refusal to serve. Penalty.

Stealing or destroying ballot-box, etc.

SEC. 49. If any person shall steal or willfully break or destroy any ballot box used or intended to be used at any election or shall willfully or fraudulently conceal, secrete or remove any such box from the custody of the inspectors of election, or shall alter, deface, injure, destroy (a) or conceal any ballot which has been deposited in any ballot box at such election or any poll list used or intended to be used at such election, or any report, return, certificate or other evidence in this Act required or provided for,[1] shall on conviction thereof be adjudged guilty of a misdemeanor, and shall for each and every such offense be punished by imprisonment in the county jail for not more than two years or by a fine of not more than two hundred dollars or both.

Penalty.

(a) "The defendant was indicted under Sec. 49 of Ch. 39, Vol. 19, Laws of Delaware, the charge being that he "Did then and there unlawfully destroy certain ballots," &c. (430)

Lore, C. J.: "The distinct charge, and the only thing that you have anything to do with, is, whether or not he *destroyed* those ballots."

(The Court held the indictment did not have to show specifically *how* they were destroyed.) 431.

State vs. Mundy, 2 Marv. 429 at 432. (yr. 1895)

Majority decision.

SEC. 50. If, in any election district, in any registration or revision of registration of voters, or at any election hereafter held in said city, any inspector of election or poll clerk shall knowingly or willfully admit any person to registration, or make any entry upon any register of voters or poll books, or receive any vote, or proceed with a canvass of ballots, or shall consent thereto, unless a majority[2] of the inspectors of election in said election district are present and concur, he shall upon conviction thereof be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for not more than sixty days or by a fine of not more than one hundred dollars or both.

Penalty.

Irregularities and defects.

SEC. 51. Irregularities or defects in the mode of noticing, canvassing, polling or conducting any election authorized by

1. See also Act May 15, 1891, 19 D. L. p. 100, Sec. 36 (p. 386 of this volume.)

2. See Sec. 23 of this Act, p. 287; see also Act May 27, 1898, 21 D. L. pp. 76-77, Secs. 9 and 11, (pp. 310-311 of this volume); see also Act June 1, 1898, 21 D. L. pp. 118-119, Sec. 19.

this Act shall constitute no defense to a prosecution for a violation of the provisions of this Act.

Prosecution.

Evidence.

SEC. 52. Upon any prosecution for procuring, offering or casting an illegal vote, the accused may give in evidence any fact tending to show that he honestly believed upon good reason that the vote complained of was a lawful one.

Duty of Attorney-General.

SEC. 53. It is hereby made the special duty of the Attorney-General of the State of Delaware to immediately prosecute all complaints which may be made of a violation of any of the provisions of this Act to final judgment; and it shall be the duty of the Department of Elections to notify the said Attorney-General of all violations under this Act.[1]

Inconsistent acts repealed.

SEC. 54. That all laws or parts of laws heretofore passed inconsistent with any of the provisions of this Act be and the same are hereby repealed.

Passed at Dover May 13, 1891.

AN ACT Providing for a Uniform System of Registration of all Qualified Voters in this State. 21 D. L. 69.

General registration of voters.

Purpose.

SECTION 1. That for the purpose of preventing fraud at all elections held on the Tuesday next after the first Monday in the month of November, as provided by Section 1 of Article 5 of the Amended Constitution, and facilitating the ascertainment of those who are duly qualified electors according to the said amended Constitution and laws of this State, there shall hereafter be a general registration of all the qualified voters resident in each election district of this State.

Duty of registration officers.

SEC. 2. It shall be the duty of the Registrar and two Assistant Registrars appointed in each election district in this State to register the names of all qualified voters in each of such election districts as hereinafter provided in this Act.

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1. See Act May 20, 1898, 21 D. L. at p. 145, Sec. 8. (p. 336 of this volume.) This section supplies Sec. 53 so far as it relates to the duty of the Department of Elections.

Sittings for registration.

Places.

Hours.

Days.

And to that end shall sit for the purpose of ascertaining and registering the persons who are qualified to enjoy the right of an elector at the general election then next following, at such public and suitable places[1] in their respective election districts as will, in their judgment, be most convenient for the voters thereof, from 8 o'clock A. M. until 7 o'clock P. M., with an intermission from 12 to 1 o'clock, on the three successive Saturdays in August, beginning with the first Saturday in August, and on the third Saturday in September, and on the third Saturday next preceding the day of election.

Notices of places of sitting.

Each of said Registrars, at least ten days prior to the first sitting for the purpose of registration as aforesaid, shall give public notice, by advertisement, posted in ten or more of the most public places in his election district, of the places where the Registration officers shall sit for the registration of voters as aforesaid, and the day or days when they will sit at each of said places.

Persons who are admitted in room.

Limitation of witnesses in room.

Other persons not admitted.

Ejecting persons.

SEC. 3. The Registration officers shall admit into the room in which registration is being made one suitable person to be selected by and to represent each of the political parties having tickets to be voted for at the coming election the applicants for registration (one at a time) and such witness or witnesses as the applicant may desire to establish his right to be registered, and such witness or witnesses as the person who challenges the right of any applicant to be registered as he may name provided, however, that in no case shall there be more than one witness in the room at the same time, and provided further that no other person or persons shall be admitted into the room during the registration of voters, and they may eject from the room any of such persons behaving in a disorderly manner.

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1. The Department of Elections for the City of Wilmington, at the time of dividing the city into election districts, designates a suitable and proper place in each election district, for the holding of elections therein, and persons entitled to vote shall vote at such places. Act June 1, 1898, 21 D. L. p. 94. (p. 337 of this volume.)

SEC. 4. The Registrar and the Assistant Registrars in each election district in this State shall at the times in this Act designated for registration meet in their respective election districts at the places which, as provided in this Act shall be designated for such meeting, and at such times shall do and perform the following acts, viz: Registration officers to meet.

First. * * * * * * * * * Repealed, Act March 4, 1907, 24 D. L. 146.

Second. They shall record in the registers in the column headed "name" the name of every male person who shall personally appear before them, and apply to be registered, writing his surname and first Christian name in full and also any other name by which he is generally known, with the initial or initials of any other name or names which he may have in addition thereto, the surname being written first. The names of said applicants for registration shall be numbered consecutively in the order of their application, the number being entered on the Registers in figures immediately before each name. Recording name of applicant.

Third. They shall examine all persons, who personally apply, as to their qualifications as electors, and shall immediately enter in the Register the statements and facts below set forth, and in the manner following, viz: Examination of applicants and entries.

I. * * * * * * * * * * Repealed, Act March 4, 1907, 24 D. L. 146.

II. * * * * * * * * * * Repealed, Act March 14, 1901, 22 D. L. 111.

III.[1] * * * * * * * * * * Repealed, Act March 14, 1901, 22 D. L. 111, Sec. 2.

IV. In the column headed "nativity," they shall enter the State, territory or country in which the applicant states he was born. Nativity.

V. Under the column "residence" the name and number of the street, avenue, or other location of the dwelling, if there be a number, and if there shall not be a number, the post office of the person so applying for registration, or such other clear and definite description of the place of said dwelling as shall enable it to be readily ascertained, fixed and determined. Residence.

1. The above related to "age." It is not lawful now to enter one's exact age. The entry must be: "Twenty-one and upwards." Act March 14, 1901, 22 D. L. 111, Sec. 2, (p. 326 of this volume.)

Term of residence.

VI. In the subdivision of the column headed "term of residence," how long he has resided in the State, how long in the County and how long in the election district in which he applies to be registered.

Naturalization.

VII. In the column headed "naturalized" the words "yes" or "no" or "native" as the facts shall appear.

Registered voter.

VIII. In the column headed "registered voter," if the registration officers shall be satisfied, upon examination or otherwise, that the applicant for registration is entitled to be registered as a registered voter, they shall write his name in full as written in the first column.

Disqualified.

IX. In the column headed "disqualified," if they are satisfied upon examination or otherwise, that the applicant for registration is disqualified as an elector in the election district in which he shall apply to be registered, a line shall be heavily drawn in ink opposite his name headed "Registered Voter" and the cause of his disqualification shall be briefly stated in the column headed "disqualified," opposite his name as first recorded, and a line shall be drawn across his name as first entered, but in such manner that said name shall remain legible. Provided that every applicant for registration shall,

Qualifications for registration as qualified voters.

* * * * *[1] be held and considered to be a qualified voter, if he be a male citizen of this State of the age of twenty-one years (*a*) and upwards, or who will be the age of twenty-one years on or before the election, next succeeding his registration, and will have resided (*b*) in the State one year next before such election, and for the last three months thereof will have been a resident of the county, and for the last thirty days a resident of the election district in which he may offer to vote and in which he shall have been duly registered; *provided* that

Who may not acquire residence.

no person in the military, naval, or marine service of the United States shall be considered as acquiring a residence in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State; and no

Disqualifications.

idiot, or insane person, pauper, or person convicted of a crime

1. The law requiring the payment of a registration fee to become registered has been repealed. Act March 4, 1907, 24 D. L. p. 146. (p. 327 of this volume.)

deemed by law a felony, or person who shall have been rendered incapable of voting by reason of violating Section 7 of Article 5 of the Constitution of this State for ten years next following his conviction and sentence thereunder, shall be held or considered a qualified voter.

(*a*) A person is "of age" the day before his birthday.
Bayard, C. J.: "A person is "of the age of twenty-one years" the day *before* the twenty-first anniversary of his birthday."
State vs. Clarke, 3 Har. 557 at 558. (yr. 1840)

(*b*) Residence is mostly a question of intent.
The Court: "The ground on which the vote was objected to was want of residence. P had resided in Wilmington, and left his home for Pennsylvania. For what purpose? Was it a change of residence? This is to be collected from his acts and declarations. If he went with the intention to reside in Pennsylvania, or to give up his abode in Delaware, it was a loss of residence, and he had no right to vote. Even if he went with a floating intention to return, it would be a loss of residence. (9th Vol. 379)."
State vs. M'Donald, 4 Har. 555 at 556. (yr. 1845)
State vs. Frest, 4 Har. 558. (yr. 1844). See Rev. Code, 1903, p. 141, Sec. 3.

X. In the column headed "Date of Application," they shall enter the day of the month and year on which application for registration is made. Date of application.

XI. In the column headed "if challenged" the words "yes" or "no." Challenges.

XII. In the column headed "cause of challenge," they shall enter the objections and by whom made. Cause of challenge.

XIII. In the column headed "appeal" they shall enter "yes" or "no." Appeal.

XIV. In the column headed "remarks" they may enter such facts or statements as may be deemed pertinent to the qualification or disqualification of the applicant as an elector. Remarks.

Fourth. In making the entries hereinbefore specified the registration officers shall in every case, make such entries in the columns above specified opposite the name of the applicant to whom such entries are intended to apply, if the registration officers shall be in doubt, after the primary examination of the applicant for registration, and upon such evidence as may be immediately obtainable, whether such applicant ought to be Postponement of registration of applicants in case of doubt.

registered as a registered voter, they may postpone the determination of the matter to their next sitting or to a later sitting at the request of the applicant.

Signing each day's registration.

Fifth. It shall be the duty of the registration officers of each and every election district in this State, upon the close of each day's registration, to write in the line on their registers, immediately below the last person registered on said day the words "end of the . . . day's registration," and immediately under said entry the said registration officers shall sign their respective names with the proper designation of their office. The said entries shall in no way interfere with the numbering of the names of the persons as the same shall be entered upon said registers, but the same shall be continued as if the said entries had not been made.

Not to interfere with numbering ing of names.

In case of challenge for bribery, etc., oath to be administered.

SEC. 5. If, upon the personal application of any one to be registered, he shall be challenged for having received or accepted, or for having offered to receive or accept, or for having paid, transferred or delivered, or for having offered or promised (*a*) to pay, transfer or deliver, or for having contributed or offered or promised to contribute to another to be paid or used any money or other valuable thing as a compensation, inducement or reward for the registering (*b*) or abstaining from registering of any one qualified to register, it shall be the duty of the Registrar to administer to the person so challenged an oath or affirmation as follows, viz:

(*a*) See Sec. 34, "a" of the preceding Act for the meaning of "offer" and "promise."

(*b*) Prosecutions for offering, or giving money to one with which to get registered, are brought under Sec. 7, Art. 5 of the Constitution upon information filed by the Attorney-General, and are tried by the Court of General Sessions, and not by a jury. (See Sec. 8.)
State vs. Collins, 1 Penn. 420. (yr. 1898), the first case thus tried.
State vs. Moore, 2 Penn. 299. (yr. 1899)

Form of oath.

"You do solemnly swear upon the Holy Evangels of Almighty God (or 'You do solemnly, sincerely and truly declare and affirm') that you have not received or accepted or offered to receive or accept, or paid, transferred or delivered, or offered or promised to pay, transfer or deliver, or contributed or offered or promised to contribute to another, to be paid or

used, any money or other valuable thing as a compensation, inducement or reward for the registering or abstaining from registering of any one qualified to register at the registration for this present year, so help you God (or 'so you do solemnly, sincerely and truly declare and affirm')."

Such oaths or affirmation shall be conclusive evidence to the registration officers of the truth of such oath or affirmation; but if any such oath or affirmation shall be false, the person making the same shall be guilty of perjury, and on conviction thereof shall bar any prosecution under Section 8, Article 5 of the Amended Constitution. If any person so challenged as aforesaid, shall refuse to make the oath or affirmation above prescribed, then it shall be the duty of the registration officers to cause a line to be heavily drawn in ink opposite his name in the column headed "Registered Voter," and in the column headed "Disqualified" to insert the words "disqualified for refusing to make the oath concerning bribery at registration," opposite his name as first entered, in such manner that said name shall remain legible.

Oath to be conclusive evidence.

False oath perjury.

Refusal to make oath.

Entry of disqualification.

SEC. 6. When the registration officers of any election district in this State, at any of the sittings hereinbefore provided for, shall enter in the Registers the name of any applicant for registration as a registered voter, they shall immediately thereafter enter, in the presence of such applicant, if he remains in attendance, in its proper alphabetical place in the "Book of Registered Voters," heretofore provided for, the name of such applicant, and also his residence, and color, and his age, if he will be between the ages of twenty-one and twenty-two on the day of the next following general election.

Entries in books of registered voters in presence of applicant.

II. And the Registrar shall give to each person who is registered as a registered voter and who may request it a certificate to the following effect:

Certificate of registration.

..... Election District, in ..... Representative District, in ..... County, State of Delaware.

Form of certificate.

Date ..... day of ....., 19..

I do hereby certify that ..... has this day been registered as a registered voter in the election district

above mentioned, and that his number on the registers is number .....

[Signed] .....

Registrar for ..... Election District, in .....

Representative District, in ..... County.

Printing of alphabetical lists of registered voters.

III. The said registration officers shall within one week after their third sitting as aforesaid cause to be printed not less than fifty copies of the alphabetical lists of registered voters as contained in the "Book of Registered Voters," together with the entries opposite the names in said books, and shall within the said week cause one of said printed copies of each of said lists to be posted in at least ten of the most public places in their election district, and shall use the remaining copies in such a manner as in their judgment will be most likely to secure publicity and general inspection.

Posting of lists.

Review of decision of registration upon affidavit.

SEC. 7. Upon the affidavit of a legal voter in an election district, made before any person authorized by the laws of this State to administer oaths and represented to the registration officers of the election district, of which said affiant is a voter, that in his opinion any person (naming him) is illegally registered in such election districts as a registered voter and setting forth the reasons therefor, it shall be the duty of the registration officers to examine into the matter of the registration of such persons, and, if said registration officers deem it a proper case for a hearing, notice shall be given to such person, either personally or in writing, in the manner hereinafter provided, to appear before the said registration officers at their next sitting to show cause why his name shall not be stricken from the "Books of the Registered Voters" of such election district. And if upon examination and inquiry the registration officers shall be satisfied, (a) at the sitting at which such person had notice to appear, that he ought not to be registered as a registered voter, a heavy line shall be drawn in ink through his name in the column headed "Registered Voter," and a line shall be drawn through his name as first entered, but in such manner as said name shall remain legible, and the cause of his disqualification shall be briefly stated in the column headed "Disqualified," and in the column headed "Re-

Hearing, notice of.

Entries in case of decision to strike off name.

marks,'' opposite his said name shall be written the words ''adjudged disqualified on revision by the registration officers,'' and the date when his disqualification was ascertained as aforesaid and in the books of ''registered voters'' a heavy line of ink shall be drawn through his name, his residence, his color and his age.

(*a*) Sec. 11 of this Act makes provision for an appeal. The phrase, ''if upon examination and inquiry the registration officers shall be satisfied,'' &c., vests the officials with discretionary and judicial powers, and the appeal provided for in Sec. 11 is the only remedy as to getting the name restored.

Hastings vs. Henry, 1 Marv. 287 at 292. (yr. 1894)
Lurtz vs. Hardcastle, 1 Marv. 450. (yr. 1894)

Removal from district in which registered.

Application to officers.

Certified copy of entries and certificate.

Registration in other district.

Proviso as to residence.

Entries in case of such application.

SEC. 8. If any person registered as a registered voter, in any election district in this State, shall, after he is so registered, remove from the district in which he is so registered to any other district in the county, he may apply in person to the registration officers of the election district in which he is registered and have his name stricken from the ''Registers'' and from the ''Books of Registered Voters'' in which his name shall appear, and may obtain from said registration officers a certified copy of the entries in the register relating to him, together with a certificate that his name has been stricken from the register and books of registered voters, as aforesaid; and it shall be lawful for him, after his name shall be so stricken from said registers and book of registered voters, to cause himself to be registered in the election district to which he may have removed upon producing the aforesaid certificate and copy of entries in said registers and books of registered voters; *provided*, that by the next following general election he will have acquired in the election district to which he has removed the residence required by the Constitution. And the registration officers to whom such persons may apply to have his name stricken from the registers and books of registered voters shall draw a line in ink through his name and all the entries opposite his name in said registers and books of registered voters and in the column in the registers headed ''remarks'' shall enter ''removed from this election district into ..... election district in this County,'' and shall prepare and de-

liver to him the certified copy of entries and the certificate aforesaid.

Quorum and acts of registration officers.

SEC. 9. At every sitting of said registration officers two shall constitute a quorum and the acts of a majority shall be as valid as the acts of all of them.

Written notice what sufficient.

II. In all cases where written notice is required by this act to be given to any person such notice shall be deemed sufficient if addressed to the person to be notified at the postoffice named by him, at the time of his application for registration, and deposited in the mail not later than the Wednesday next preceding the sitting of the registration officers at which he may be notified to appear.

Comparison of registration books.

SEC. 10. It shall be the duty of the registration officers, immediately after the close of their last sitting, carefully to compare the two registers, and see that they agree with each other in every particular, and also to compare the alphabetical lists of "Registered Voters" as contained in the "Books of Registered Voters" aforesaid, with the said registers, and to see that the name of every person entered upon the registers as a registered voter is entered in its proper alphabetical place on each of the two lists of registered voters, together with the residence and color[1] and also the age[2] if it be between the ages of twenty-one and twenty-two years on the day of the next general election, as entered on the registers. And if any name in the registers which ought to have been entered on said alphabetical lists of registered voters shall have been omitted therefrom, it shall be the duty of said registration officers to enter such name in its proper alphabetical place, on the proper alphabetical lists, together with the proper entries as they appear on the said registers.

Entry of omitted names.

Corrections of books.

II. And it shall be the further duty in such comparison of the alphabetical lists with the registers to make such cor-

1. "Color" is not entered in the "Registers." See Act March 14, 1901, 22 D. L. p. 111, Sec. 1. See p. 283, note 3, and p. 326 of this volume.

2. It is not lawful to enter the age in the "Registers;" the entry shall simply be: "Twenty-one and upwards." See Act March 14, 1901, 22 D. L. p. 111, Sec. 2, p. 326 of this volume.

rections on the alphabetical lists as will make the names and entries appearing on the alphabetical lists agree with the same names and entries as entered on the registers. It shall also be the duty of the said registration officers, within three days after their last sitting, to append to each of said alphabetical lists of "registered voters" contained in said "Books of Registered Voters" a certificate, verified by the oath or affirmation of said registration officers, or at least two of them, that the said "Book of Registered Voters" contain a complete list of the registered voters of said election district, as the same are entered in the "Books of Registered Voters" of such election district.

Certificate to be appended to books.

III. And the said registration officers shall, within the three days aforesaid, also append to the registers of their election districts a certificate that each of said registers is the official register of such election district, and, so far as within their knowledge, no false or improper entries have been made therein, which certificate shall be made and verified by at least two of said registration officers.

Certificate to be appended to registers.

SEC. 11. (*a*) From the decision of the registration officers granting or refusing registration, or striking or refusing to strike a name or names from the registration lists, any person interested, or any registration officer may appeal to the Resident Associate Judge of the county, or in case of his disability or absence from the county, to any Judge entitled to sit in the Supreme Court, whose determination shall be final, and in order to prosecute said appeal it shall be the duty of the person taking the same to notify the "Registrar" of the election district from the decision of whose officers said appeal is taken stating in said notice the time when said appeal will be presented to the Resident Associate Judge of his county or such Judge of the Supreme Court as may sit for the purpose of receiving and hearing such appeal which time shall be one of the days hereinafter named for such Resident Associate Judge or Judge of the Supreme Court to sit for the purpose of receiving and hearing appeals.

Appeal to resident Associate Judge or other Judge.

Decision final.

Notice to registrar.

Time of hearing appeal.

(*a*) See Sec. 7 "a" of this Act.

SEC. 12. * * * * * * * * * *

SEC. 13. * * * * * * * * * *

SEC. 14. * * * * * * * * * *

Duties of assistant registrars to make entries.

SEC. 15. It shall be the duty of the assistant registrars in this act provided for to make all the proper entries in the "Registers" and "Books of Registered Voters" as the same are required by this act to be made, except such entries as are provided for in Section 16 of this act; and it shall be the duty of the registrar, in addition to the other duties required of him, to fill up, prepare and deliver all certificates of registration that may be required by registered voters, and to receive and file all affidavits which may be filed.

Additional duty of registrars.

Sittings of Judges to hear appeals.

SEC. 16. It shall be the duty of the Resident Associate Judge of New Castle County to sit at the Levy Court room of New Castle county, and the Resident Associate Judge of Kent county to sit at the Levy Court of Kent county, and the Resident Associate Judge of Sussex county to sit at the office of the Clerk of the Peace for Sussex county, or if said places cannot conveniently be had, then at such proper and suitable places in the county seat of the respective counties of this State as shall be designated by notice signed by the said Resident Associate Judge of his county, and posted on the door of the respective places aforesaid, stating where he will sit for the purpose of hearing appeals from the decision of the Registrars in the respective election districts in his county on [the first Tuesday in September;] in the year in which registration is required by law to be made, at 10 o'clock in the morning of said day, on which day he shall receive appeals from such persons as shall have appealed from the decision of the registration officers of the respective election districts in his county, which shall be presented on said day, and he shall proceed to hear all appeals which shall have been filed as aforesaid on said day, and may continue the hearing of any such appeal or appeals from day to day during the remainder of the week, and shall sit again on [the first Monday after the fourth Saturday in September] for the purpose aforesaid, to hear and determine such appeals as shall not have been acted upon

Amendment, Act March 20, 1905, 23 D. L. 90.

Time of sitting in September.

Hour.

Hearing appeals.

Amendment, Act March 20, 1905, 23 D. L. 90.

* * * * * and also such as may be presented and filed on said last mentioned day, and may continue the hearing of any appeal or appeals then unheard from day to day during the remainder of the week, and until all appeals which shall have been filed shall have been heard and decided. Repealed. 23 D. L. 90.

The said Resident Associate Judge shall again sit for the purpose of hearing appeals as aforesaid on the Tuesday next following the last day of registration as provided for in this act, to receive appeals from such persons as shall have appealed from the decision of the registration officers of the respective election district in his county as aforesaid, made on the said last day of registration, and any other appeal or appeals which for any cause he may have continued from a preceding sitting, and shall proceed to hear all appeals which shall have been filed as aforesaid, and may continue the hearing of any such appeal or appeals from day to day during the remainder of the week, and shall sit again on the Tuesday next following, for the purpose aforesaid, to hear and determine such appeals as shall not have been acted upon the previous week, and also such as may be presented and filed on said last mentioned day, and may continue the hearing of any appeal or appeals then unheard from day to day during the remainder of the week, and until the close of the day next preceding the day of the election; *provided*, [that appeals from the decisions of the registration officers made on the first, second, third or fourth registration day shall not be received on the third or fourth appeal day] unless the appellant shall make oath before the said Resident Associate Judge that the delay in presenting his said appeal was not for the purpose of hindering or delaying the said Resident Associate Judge or the officer of registration in his election district in the discharge of the duties imposed upon them respectively under the provisions of this act. Sitting in September.

Amendment. Act March 20, 1905, 23 D. L. 90.

Oath that delay in presenting appeal was not to hinder or delay.

II. No appeal shall be received and acted upon by the Resident Associate Judge unless the appellant shall, at the time of presenting his appeal make an affidavit, that notice of his intention to present his appeal on this day was served upon the Registrar of his election district; any person applying to the said Resident Associate Judge to have any name appearing on the register and books of registered voters in his election Affidavit of notice of appeal.

Notice to registrar of application for corrections.

district in any manner incorrect to be corrected shall notify the registrar of the election district on whose books such name is incorrectly entered of his intention to make application for the correction thereof, so that the said registrar shall and may be present with his register and books of registered voters to make such corrections therein as the said Resident Associate Judge shall order and direct; *provided,* that no correction shall be ordered to be made by the said Resident Associate Judge unless he shall be satisfied by the oath of the applicant or otherwise that notice of the intended application for correction shall have been given to or served upon the registrar of the appellant's election district of his intention to make said application. All notices required to be given or served by the provisions of this section upon any registrar shall be so given or served personally at least three days before the application is made, or by leaving, in the presence of an adult male person, a written copy of such notice at the usual place of abode of such registrar, at least three days before the application shall be made, and no application for correction or for the hearing of an appeal shall be heard upon any day which is set apart by this act as a day for the registration of voters.

Serving of notice.

Application for correction or appeals not to be heard on day of registration.

Order of Judge for making entries.

III. Upon the decision of the respective Resident Associate Judges on each and every appeal, the Resident Associate Judge making the decision shall order and direct the Registrar of the election district from the decision of whose registration officers the appeal shall have been taken, and who shall be present with his "Registers" and "Books of Registered Voters" as hereinafter provided, to make such entries in his "Registers" and "Books of Registered Voters," as such registrar is authorized by the provisions of Section 4 of Article V of the Constitution of this State and by the provisions of this act to order and direct to be made and as are required by law to be made in said "Registers" and "Books of Registered Voters" by the registration officers in case where a person is entitled to be registered as a registered voter. * * *[1]

1. The above related to the payment of a $1 registration fee. It was repealed by Act March 4, 1907, 24 D. L. p. 146. (p. 327 of this volume.)

Duties of Resident Judge to apply to Judge of Supreme Court sitting in place of such Resident Judge.

IV. All duties which are imposed upon the Resident Associate Judge of the county by the provisions of this act and especially of this section shall be and they are hereby imposed upon and required to be performed by such Judge of the Supreme Court as shall at any time be sitting in any of the counties of this State for the purpose of hearing appeals under this act, in lieu of the Resident Associate Judge of the county when he shall be unable to sit either from disability or absence from the county.

Registrar to be custodian of books.

Attendance at hearing of appeals.

SEC. 17. In order that the Registrar in each and every election district in this State, may be enabled to perform the duties especially required of him by this act, he shall retain and keep possession of and be responsible for the "Registers" and "Books of Registered Voters" and book of registration certificates of his election district at all times excepting when being used by the registration officers of his election district for the purpose of registration; and it shall be his duty to attend and be present at all hearings of which he had notice before the Resident Associate Judge of the county or such Judge of the Supreme Court as may be sitting for that purpose, of appeals which shall have been taken from the decision of the registration officers of his election district and also upon the hearing for the correction of any name or names on his "Registers" or "Books of Registered Voters" improperly omitted or improperly appearing or in any manner incorrect thereon, and to have with him the said "Registers" and "Books of Registered Voters" and to make such entries in said books respectively as said Resident Associate Judge or Judge of the Supreme Court for the purpose of hearing such appeals and make such corrections, may order and direct.

Alternate registrar, when sitting to have all powers and duties of registrar.

SEC. 18. All the powers and duties conferred or enjoined upon registrars by any of the provisions of this act, are hereby expressly made the powers and duties of all alternate registrars in the absence of the registrar from his election district, or his disability to perform the duties imposed upon such registrar by any of the provisions of this act; and in order to enable the alternate registrar to perform the duties in this section imposed upon him, it shall be the duty of the registrar to

Books and papers to be delivered to alternate registrar.

deliver or cause to be delivered to the alternate registrar the register, book of registered voters, and book of registration certificates in the custody or possession of such registrar, and all notices of appeal which shall have been served upon him, whenever it shall be the duty of the alternate registrar to act in the place and stead of such registrar as provided in this section.

Registrar to deliver books to inspector.

SEC. 19. It shall be the duty of the registrars in the respective election districts of this State, on the morning of the day of the general election and one hour before the opening of the polls for said election, to deliver to the inspector, or other person authorized to hold said election in his, the said registrar's election district, one of said "Registers" and one of said "Books of Registered Voters" in his possession, certified to as hereinbefore provided. And the other of said "Registers" together with the other of said "Books of Registered Voters" and the books of registration certificates, containing unused certificates, together with all other papers or documents relating to the registration of voters, he shall retain in his possession and safely keep, but the same shall at all proper times be open to the inspection of any one desiring to examine the same, without fee or reward, and also any one desiring to do so may be permitted to make copies or partial copies of any of said lists, books, documents or papers.

To keep other books safely.

Registrar to deliver duplicate books to the Clerk of the Peace.

II. And within one week after the following general election he shall deliver the said duplicates in his possession to the Clerk of the Peace of the county in which he resides, who shall safely keep the same, in his office, and the same shall be open to public inspection at all convenient times as other public records in the office of said Clerk of the Peace.

Registrars clothed with powers of Justice of the Peace.

SEC. 20. Each of the Registrars shall in addition to the other powers conferred upon him by this act have, during the respective times of the appointed sittings for registration, the powers of a Justice of the Peace to preserve order and enforce obedience to his lawful commands at or around the place of registration; to keep access to such place open and unobstructed, to prevent and suppress riots, tumults, violence and

disorder at, around or near the place of registration, tending to intimidation, or to the obstruction of the work of registration and to protect and keep safe the registers or books for the registration of voters while in his and the assistant registrars' custody and possession. He may compel the presence of witnesses before them while sitting with the assistant registrars as registration officers, for all purposes connected with the performance of the duties of their office, by summons and attachment, and shall have power to administer oaths and affirmations. He may, while sitting as such officer of registration, commit for trial any person committing at, or around the place of registration a breach of the peace, or any offence forbidden by this act. He shall have the power to issue any of said summons, attachments or commitments, when sitting in any election district in this State to the Sheriff of his county or to any Constable thereof. All such process shall be served by said officers in the same manner as if they were issued by a Justice of the Peace within such county.

Power to compel attendance of witnesses.

Oaths or affirmations.

Commitment of offenders.

to whom process may be issued.

Service of process.

II. The Sheriff or Constable in any county of this State, who shall serve any such process shall receive the same fees and in like manner as it is or may be by law, *provided* that he shall receive fees in other State cases. But no registrar shall charge or receive any compensation for any service rendered in accordance with the provisions of this section in addition to the compensation or salary provided for in this act.

Fees of officers serving process.

Registrars not to receive compensation for this service.

SEC. 21. Each registrar shall receive five dollars per day for each day of actual service, either when sitting for the purpose of registration or in attendance upon the hearing of appeals before the Resident Associate Judge of the county, or such Judge of the Supreme Court as may sit for hearing such appeals.[1] * * * * * * * * * *

* * * * * * * * * * * *

Compensation of registrar.

II. And each assistant registrar shall receive five dollars per day for each day of actual service, when sitting for the purpose of registration.

Compensation of assistant registrar.

1. Registration fee abolished. Act March 4, 1907, 24 D. L. p. 146. (p. 327 of this volume.) (The stars referred to the old registration fee.)

Compensation of alternate registrar.

III. And each alternate registrar shall receive five dollars per day for each day of actual service, when sitting in the place of the registrar for registration, or in attendance upon the hearing of appeals before the Resident Associate Judge of the county or such Judge of the Supreme Court as may sit for hearing such appeals.[1] * * * * * * * *

* * * * * * * * * * * * *

Ascertainment of amount of compensation by Levy Court.

IV. It shall be the duty of the Levy Court in each of the counties in this State, at its November session, to ascertain the amount of compensation under this act due the registrars, alternate registrars and assistant registrars in their respective counties, and when so ascertained, the president of the said Levy Court shall certify the same to the State Treasurer, who shall thereupon pay to the persons entitled the sums severally due them out of any money appropriated for that purpose.

Payment.

Cost of printing, rent, supplies, etc.

V. The cost of printing and posting the alphabetical lists contained in the books of registered voters aforesaid, and of printing and mailing the notes required by this act, and the rent of the room or rooms used by the said registration officers in the performance of the duties required by this act, the cost of printing any forms or blanks that may be required, and the cost of the necessary ink and stationery used by them provided for by this act, shall be paid by the Levy Courts of the respective counties upon proper vouchers.

How paid.

Bringing, taking, ordering, or sending spirituous liquors into or drinking same in place of registration.

SEC. 22. Whoever, during the sitting of the registration officers in any election district in this State, shall bring, take, order or send into, or shall attempt to bring, take or send into any place of registration, any distilled or spirituous liquors whatever, or shall at any such time or place, drink or partake of any such liquor, shall be deemed and held to be guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for not more than ninety days, or by a fine of not more than one hundred dollars, or both.[2]

Penalty.

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1. See note to Sec. 21 of this Act, p. 317.

2. See Act May 13, 1891, 19 D. L. p. 150, Sec. 32. (p. 290 of this volume.) See also p. 397 of this volume.

Fraudulent entries, changes or alterations in books of registration.

SEC. 23. If any registrar, alternate registrar, or assistant registrar, shall fraudulently enter or fraudulently permit to be entered in any register, the name of any person as a registered voter who is not entitled to be entered therein as a registered voter, or if any other person not authorized by the proper registration officers shall enter into any register the name of any person as a registered voter, or if any registrar, alternate registrar or assistant registrar shall fraudulently refuse or omit to register, or shall fraudulently misspell in any register or in any book of registered voters in his charge, the name of any person entitled under the provisions of this act to have his name entered in such register or book of registered voters, or if any registrar, alternate registrar, or assistant registrar, shall fraudulently strike from any register or from either of said books of registered voters in his charge the name of any person entered therein; or if any other person not authorized by the proper registration officers shall strike from any register or from any book of registered voters the name of any person entered therein; or if any registrar, alternate registrar, or assistant registrar, shall make any entry or entries in the said register, or books of registered voters, except at the times and in the manner hereinbefore provided, or if any registrar, alternate registrar or assistant registrar, shall do anything which is by this act forbidden by him done, or shall omit to do anything which is by this act required to be by him done, he shall be deemed guilty of a misdemeanor, and upon conviction thereof by indictment, shall be fined not exceeding five hundred dollars, or be imprisoned not exceeding three years, or may be both fined and imprisoned at the discretion of the Court.

Penalty.

Person causing himself to be wrongfully registered.

SEC. 24.[1] If any person shall cause or attempt to cause himself to be registered in the name of any other person living or dead, or under any fictitious name, or shall cause or attempt to cause himself to be registered in any election district in this State, knowing that he has not the right to be registered; (a) or if any person, knowing himself to be registered in any election

1. See Act May 13, 1891, 19 D. L. pp. 155-6, Secs. 46 and 47. (p. 298 of this volume.)

district in this State shall cause or attempt to cause himself to be registered in any other (*b*) election district in this State without having first caused his name to be stricken from register and books of registered voters in which he may have been previously entered; or if any person, knowing himself to be disqualified as a voter at the next following general election shall cause or attempt to cause himself to be entered on the registers in any election district in this State as a registered voter therein, knowing that he is not at that time a qualified voter and will not become so by the next following general election; (*c*) or if any person shall by force, threat, menace, intimidation, bribery or any unlawful means, prevent or hinder, or attempt to prevent or hinder any person having a lawful right to have his name entered on the registers in any election district in this State from duly exercising such rights, or shall compel or attempt to compel by any such means, any registrar, alternate registrar, or assistant registrar, to enter on their register the name of any person not legally entitled to be entered therein, or to refrain from entering on their registers the name of any person legally entitled to be entered thereon, or shall lawfully interfere with any registrar, alternate registrar, or assistant registrar, in the discharge of his duties under this act; or if any person shall make any assault or commit any assault and battery, (*d*) or incite or create any riot or breach of the peace at or near to any place of registration in this State, during the sitting of any registration officers, he shall be deemed guilty of a misdemeanor, and upon conviction thereof by indictment shall be fined not exceeding five hundred dollars, or be imprisoned not exceeding three years, or may be both fined and imprisoned at the discretion of the Court.[1]

Or by intimidation or bribery, interfere with registration of others.

Assault, riot, breach of peace.

Penalty.

(*a*) See Sec. 33 "b" of the preceding Act, and the case of State vs. Vincent, 1 Marv. 560 at 562. (yr. 1895)

(*b*) See Sec. 33, "a" of the preceding Act, and the cases of State vs. Caldwell, 1 Marv. 555 at 559. (yr. 1895)
State vs. Lally, 2 Marv. 424 at 428. (yr. 1895)

(*c*) See note "a" of this section.

(*d*) See Sec. 47, "a" of the preceding Act, and the cases of State vs. Anderson, 1 Marv. 526 at 527. (yr. 1893)
State vs. Bell, 5 Penn. 192 at 195. (yr. 1904) See Sec. 27, "a" of same Act.

1. See Act May 13, 1891, D. L. p. 150, Sec. 33, providing a different penalty. (p. 290 of this volume.)

Loss of books by registration officers.

Destruction, mutilation, etc.

False entries etc.

Penalty.

SEC. 25. If any registrar, alternate registrar or assistant registrar, inspector or judge of election shall lose any register or book of registered voters which may be in his charge or custody, or if any of such officers or any other person shall willfully destroy, mutilate, deface, falsify (*a*) or fraudulently remove or secrete any register or book of registered voters, or shall knowingly make any false entry in or false copy of any register or part of any register, or fraudulently make any entry, erasure or alteration in any alphabetical list of registered voters, as contained in any book of registered voters, he shall be deemed guilty of a misdemeanor, and upon conviction thereof by indictment shall be fined not exceeding five hundred dollars or be imprisoned not exceeding three years, or may be both fined and imprisoned at the discretion of the Court.

(*a*) See Sec. 40, "a" of the preceding Act, and the case of State vs. Brand, 2 Marv. 459 at 462. (yr. 1897)

Mutilation, defacement, pulling down or destroying alphabetical lists.

Penalty.

SEC. 26. If any person shall mutilate, deface, pull down or destroy at any time before the last sitting of the registration officers any printed copy of the alphabetical list of registered voters, when the said lists are hung up as provided in Section 9 he shall be deemed guilty of a misdemeanor, and upon conviction thereof by indictment shall be fined not exceeding one hundred dollars or be imprisoned not exceeding one year, or may be both fined and imprisoned at the discretion of the Court.

Additional registration for special election.

SEC. 27. In any case of a special election held in this State it shall be the duty of the Registration officers of the respective election districts in this State, hereinbefore provided for, to sit on the third and fourth Saturdays immediately preceding the day of such special election, from 8 o'clock A. M. until 7 P. M., with an intermission from 12 to 1, at the place where the following special election will be held, or at some convenient and suitable place in the town or village in which such election will be held, and at such sittings to add to the registers and books of registered voters aforesaid of their respective election districts the names of all persons applying to them who may have become qualified to vote since the day of

the last general election, or who may become qualified to vote by the day of such special election.

How to make entries

II. And it shall be the duties of such registration officers in adding any new names to make the same entries in the registers and books of registered voters aforesaid, as they are hereinbefore required to make when sitting as registration officers before any general election.

Registration officers to procure books from Clerk of the Peace.

III. The said registration officers, within one week before their first sitting as provided for in this section, shall procure from the Clerks of the Peace of their respective counties the two registers, and the two books of registered voters and the book of registration certificates which shall have been delivered to the Clerks of the Peace as hereinbefore provided.

Duty of Clerk of Peace to deliver books.

IV. It shall be the duty of the Clerks of the Peace in the several counties to deliver said books to the said registration officers when the same shall be applied for as aforesaid.

Delivery of books, etc., by registration officers.

V. In delivering one of the "Registers" and one of the "Books of Registered Voters" and the book of registration certificates to the inspector or other person authorized by law to hold the special election in his election district, as hereinbefore provided, it shall be the duty of said registrar to deliver the register and the book of registered voters, which was not used at the previous general election and the other of said registers and the other of said books of registered voters shall be delivered by the several registrars to the Clerks of the Peace of their respective counties within one week after such special election.

SEC. 28. All Acts and parts of Acts supplied (*a*) by or inconsistent with this Act are hereby repealed.

Approved May 27, A. D. 1898.

(*a*) This Act covers a great deal of what is contained in the preceding Act of May 13, 1891, but not all. It has supplied *portions* of certain sections of the above Act, with slight changes, but not the sections in their entirety, leaving the remaining portions of the sections in an unsatisfactory, and (in some instances,) uncertain state. Neither Act, as far as the City of Wilmington is concerned, would be complete, standing

alone and by itself. A newly drawn registration law, and also election law, are much needed.

As to repeal by a later Act *supplying* a prior Act, or a portion of it, see the case of

Husbands vs. Talley, 3 Penn. 88 at 99. (yr. 1901)

AN ACT Concerning the Appointment of Registration Officers and the Preparation and Delivery of Registration Books. 21 D. L. 63.

SECTION 1.[1] * * * * * * * * *

SEC. 2.[2] * * * * * * * * * *

SEC. 3. It shall be the duty of the Governor to cause the following books to be prepared, at the expense of the State, for the use of the said registration officers in each election district in this State including those in the City of Wilmington for the registration of names and facts following, to wit: Preparation of books.

I. Two books for the registration officers in each election district, including those in the City of Wilmington, to be known by the general name of "Registers," and to be so arranged as to admit of the convenient entry of the following particulars:[3] Registers.

First. * * * * * * * * * Supplied, Act May 27, 1898, 21 D. L. 70, Sec. 4, Part Second.

Second. * * * * * * * * * Repealed, Act March 4, 1907, 24 D. L. 146.

Third. * * * * * * * * *

Fourth.[4] His age. Repealed, Act March 14, 1901, 22 D. L. 111, Sec. 1.

Fifth. The place of birth.

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1. This section refers to the appointment of Registration Officers outside of Wilmington, by the Governor. The duties prescribed by this section are performed, for Wilmington, by the Department of Elections. See Act May 20, 1898, 21 D. L. p. 140, Sec. 3, Parts IV, V, VI, VII and VIII. (pp. 332-333-334 of this volume.)

2. This section refers, principally, to the qualifying of the Registrars, &c., outside the City of Wilmington, by the taking of oath.

As to the City of Wilmington, see Act May 20, 1898, 21 D. L. 143, Sec. 4. (p. 335 of this volume.)

3. See Act May 27, 1898, 21 D. L. 70, Sec. 4, as to entries to be made. (pp. 303-304-305 of this volume.)

4. See Act March 14, 1901, 22 D. L. p. 111, Sec. 2, which provides that the entry shall be: "Twenty-one and upwards." (p. 326 of this volume.)

Sixth. The place of his residence, of street and number, if any, and his post office address.

Seventh. The time of his residence in the State, county and election district in which he shall apply to be registered.

Eighth. If naturalized.

Ninth. If registered voter.

Tenth. If disqualified.

Eleventh. Date of application for registration.

Twelfth. If challenged.

Thirteenth. Cause of challenge.

Fourteenth. Appeal.

Fifteenth. Remarks, explanatory and supplementary.

Style of books.

II. Such Registers shall be uniform in their general character, shall be ruled in parallel columns, and shall be of such size as to contain not less than fifteen hundred names.

Ruling and headings.

III. The ruling and the heading in the above described Registers shall be substantially in the form following, to wit:

Repealed, Act March 4, 1907, 24 D. L. 146.

Repealed, Act March 14, 1901, 22 D. L. 111, Sec. 1.

.....Name .....

.....* * * *.....

.....* * * *.....

.....Age[1] .....

.....Nativity .....

.....Residence .....

.....State..... } Term of

.....Election District..... } Residence.

.....County ..... }

.....Naturalized .....

.....Registered Voter .....

.....Disqualified .....

.....Date of Application .....

.....If Challenged .....

.....Cause of Challenge .....

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1. See p. 323, note 4.

.....Appeal .....
.....Remarks .....

Second. Two books for the Registration officers of each election district, to be known by the name of "Books of Registered Voters." (a) Lists of all persons whose names may be entered on the aforesaid as "registered voters." Said books to be ruled in parallel columns and so arranged as to admit of the convenient entry in alphabetical order of the name of every person who may be entered on the registers aforesaid as a "Registered Voter," and in the parallel column opposite the name of such person the following particulars, to wit:

Books of Registered Voters.

Rulings.

(a) These "books of qualified voters are the best evidence of an elector's *right* to vote, but he may be asked as a witness," (in Court, without producing the books,) "if he did in *fact*, vote at" an "election." State vs. Matlack, 5 Penn. 401 at 402. (yr. 1905) (Syllabus.)

First. His residence.

[1]Second. His color.

[2]Third. His age, if it is between the age of twenty-one and twenty-two years on the day of the next general election.

Fourth. A book to be known as "Registration Certificates," to contain not less than fifteen hundred blanks and printed in manner and form as hereinafter provided.[3]

Registration Certificates.

SEC. 4. The Sheriff of each county shall, some time previous to the last Saturday in the month of July, in the year of holding the general election, deliver to the Registrar of each election district of his county, two of the books known as "Registers," two of the books known as "Books of Registered Voters," and a book of Registration certificates hereinbefore provided for; which said books addressed to the Registrar of each election district of the county, the Governor shall cause to be delivered to the Sheriff in each of the counties of this

Delivery of books by sheriff.

Governor to deliver books to sheriff. Where.

1. The entry as to "Color" is made in "Books of Registered Voters," but not in the "Registers." Act May 27, 1898, 21 D. L. p. 74, Sec. 6; (p. 307 of this volume), and Act March 14, 1901, 22 D. L. p. 111, Sec. 1, (p. 326 of this volume.)

2. See also Act May 27, 1898, 21 D. L. p. 74, Sec. 6. (p. 307 and p. 326 of this volume.)

3. See above Act, Sec. 6, II, (p. 307 of this volume.)

State on or before the third Tuesday in July in the year of holding the general election.

Endorsement on books by registrars.

SEC. 5. Each of the said Registrars immediately upon receiving said "Registers," "Books of Registered Voters" and book of "Registration Certificates" shall endorse upon the back and write at the head of each "Register," "Book of Regsitered Voters," and "Registration Certificates," delivered to him as aforesaid, the name of the county and the name of the election district of such county of which he is a registrar and of which such books shall respectively be the "Registers," "Books of Registered Voters" and book of "Registration Certificates" as aforesaid.

SEC. 6. All Acts and parts of Acts supplied by or inconsistent with this Act are hereby repealed.

Approved May 20, A. D. 1898.

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22 D. L. 111.

AN ACT in Relation to Registration Books which it is the Duty of the Governor to cause to be prepared for the use of the Registration Officers in each Election District in this State including those in the City of Wilmington and certain entries thereon.

Registration books not to contain columns for entries as to color.

SECTION 1. That hereafter it shall not be necessary to enter the color of the person applying to be registered on the books known as Registers which it is the duty under the laws of this State for the Governor to cause to be prepared for the use of the Registration Officers in each Election District in this State, including those in the City of Wilmington for the registration of voters, and that hereafter such Registers shall not contain columns for entries as to color.

Specific age not to be stated.

SEC. 2. That after this Act becomes a law, it shall not be lawful to enter the age of any one applying to be registered on the books aforesaid in the column headed "age," but it shall be sufficient to enter that the applicant is "twenty-one and upwards."

SEC. 3. That all acts or parts of acts inconsistent herewith be and the same are hereby repealed.

Approved March 14, A. D. 1901.

AN ACT proposing an Amendment to Section 4 of Article V, of the Constitution of this State by striking out of said Section all thereof which requires the payment of money as a Qualification to Register.

23 D. L. 11.

SECTION 1. That Section 4 of Article V of the Constitution of this State, be and the same is hereby amended by striking out of said Section 4 the following words: "and each voter shall, at the time of his registration, pay a registration fee of one dollar, for the use of the county where such registration is paid."

Proposed amendment to Sec. 4, Art. 5 of the Constitution relating to registration fee.

Approved March 30, A. D. 1905.

AN ACT Striking Out of the Statutes of the State of Delaware all Provisions in Relation to the Payment of a Registration Fee as a Qualification to Vote.

24 D. L. 146.

SECTION 1. That all provisions in the Statutes of the State of Delaware in relation to the payment of a registration fee (*a*) as a qualification to vote be and the same are hereby stricken out, repealed and made null and void.

Registration fee abolished.

SEC. 2. That all Acts and parts of Acts inconsistent with this Act are hereby repealed.

Approved March 4, A. D. 1907.

(*a*) The right to vote, now, is "free." One hundred years before 1797 the payment of a poll tax was a prerequisite to exercising this privilege by "those who had no property." "Penn made the electoral qualification one entirely of property." (63) Then came our tax, then the registration fee of $1, and now it is "manhood," with conditions in regard to registration and residence, and ability to read the Constitution in the English language, and write one's name; and prohibitions in regard to paupers, insane persons, felons, &c. Not so many years ago such a state of affairs was declared to be Utopian.

Comegys, C. J.: "Such modern ideas as manhood suffrage (if by that be meant a suffrage because of full age,) ballot for all, and slavery without the ballot, were properly left to be evolved out of the consciousness of visionary theorists, with aspirations for a

state of society dreamed of only by those who would substitute or poor humanity for the great Creator.''

Frieszleben vs. Shallcross et al, 9 Houst. 1 at 65. (yr. 1890)

(See p. 8, par. 8 ''a'' of Borough Charter.)

CHAPTER XI.

ACTS IN RELATION TO ELECTIONS.

	Page
1. Act Creating a Department of Elections for the City of Wilmington.....	329
2. Act More Clearly Defining the Duty of the Department of Elections in the City of Wilmington.....	337
3. Act Requiring Department of Elections to Designate Place for Holding Elections	337
4. Act Increasing the Department of Elections to Five Members	338
5. Act Extending the Terms of the Department of Elections Six Years.....	341
6. Act to Provide for the Purity of Primary Elections in New Castle County	341
7. Act to Provide for the Secrecy and Purity of the Ballot	368
8. Act to Further Provide for the Secrecy and Purity of the Ballot.....	387
9. An Act Prohibiting Betting on Elections.....	393
10. Act Requiring Ballots to be Marked with an Indelible Black Lead Pencil or Crayon	394
11. Act Creating the Office of Voters' Assistant, and Prescribing the Duties Thereof	396
12. Act Prohibiting Sale or Distribution of Intoxicating Liquors Within One Mile of Election Place....	397
13. Act in Relation to Municipal Elections to be Held in the City of Wilmington	397
14. Act Applying the Provisions of Certain Election Laws to Municipal Elections	414
15. Act to Authorize the Submission to the People of Wilmington of Question of Public Policy in Connection with City Affairs	415

AN ACT Creating a Department of Elections for the City of Wilmington. 21 D. L. 139.

SECTION 1. That for the objects and purposes hereinafter set forth the Governor of the State of Delaware shall in the manner and at the times and for the terms set forth in Section 2 of this act appoint [1]three persons of the city of Wilmington, who shall constitute a Department of Elections

Appointment of Department of Elections of City of Wilmington.

1. Board enlarged to consist of five members. Act March 8, 1901, 22 D. L. p. 117, Secs. 1 and 2. See p. 338 of this volume.

for the said city of Wilmington, and with the powers and duties prescribed in the sections following.

Offices of present members of department continued.

SEC. 2. That the terms of office of the present members of the Department of Elections for the city of Wilmington, as the same was constituted pursuant to the provisions of Chapter 39, Volume XIX, Laws of Delaware, shall not be vacated, but the said officers shall continue during the original term thereof, and said members shall during the continuance of their respective terms be members of the Department of Elections for the city of Wilmington created by this act. At the expiration of the term of office of the said member which shall be the first to terminate and biennially thereafter the place of the retiring member shall be filled by appointment by the Governor for the term of six years. No person shall be eligible to appointment as a member of said Department of Elections who is not a citizen of the United States of America and a resident in the said city for which he is appointed, and who has not resided therein for a term of five years next preceding his appointment. No member of said Department of Elections shall hold or be a candidate for any elective office during his membership in said department, nor until the expiration of six months after he shall have ceased to be a member of said department. When any vacancy occurs in said department by or from any cause whatsoever the Governor aforesaid shall fill the unexpired term by appointment, but at no time shall all the members of said department be of the same political faith and opinion. Each of said members shall hereafter before entering upon his duties and within one month from the time of his appointment take and subscribe and file in the office of the Clerk of the Peace of the county wherein he resides an oath[1] or affirmation that he will perform the duties of his office with fidelity and impartiality. The members of the Department

Appointment of successors.

Qualifications of appointees.

Members not to hold other offices.

Vacancies, how filled.

Political complexion.

Oath.

1. See Act March 8, 1901, 22 D. L. p. 118, Sec. 6 as to oath of office. p. 340 of this volume. See also Article 14 of the Constitution.

of Elections shall meet and organize[1] said Department of Elections, by this act constituted, by selecting one of their number to be President, whose term of office shall continue for one year from the date of such organization, when and biennially thereafter the said Department of Elections shall select one of their number to be President. Each member of the Department of Elections shall receive as compensation for his services in any year in which there is held a general or special election a salary of five hundred dollars, said compensation to be paid as hereinafter provided.[2]

Organization.

Officers.

Compensation.

SEC. 3. The duties of the members of the Department of Elections shall be as follows:[3]

Duties of department.

I. They shall, on or before the first day of June next, preceding the time of the first registration held under the provisions of this act, and in every sixth year thereafter, on or before the first day of June, divide the city into as many election districts as they shall deem necessary, and shall establish the boundaries thereof. Provided that each election district shall contain as near as may be, not more than three hundred, nor less than one hundred qualified voters. And further provided, that each of said election districts shall be entirely within the boundaries of one representative district. And on or before the first day of June A. D. nineteen hundred, and biennially thereafter, said department of elections may divide such of the election districts, and such only as, by the election last preceding such division, shall be found to contain a greater number of voters than can conveniently vote therein. They shall also designate each of said election districts by appropriate titles or distinctions.[4]

Division of city into election districts.

Number of voters in district.

District to be within one representative district.

Subsequent divisions.

Designations.

II. They shall have power to dismiss any Registrar at any time and supply his place with another person. They

Dismissal of registrars.

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1. See same Act, 22 D. L. p. 118, Sec. 6 as to time of organizations, election of officers, &c. (p. 340 of this volume.)

2. See Sec. 3, II of this Act. pp. 331-332.

3. For powers previously conferred see 19 D. L. p. 128 (Sec. 3) et seq., p. 273 this volume, and 21 D. L. p. 146 at p. 337 this volume, more clearly defining the duties of the Department of Elections in the City of Wilmington.

4. And shall designate some suitable place for holding the elections therein. Act June 1, 1898, 21 D. L. p. 94; p. 337 of this volume.

Employees. may also employ a clerk, counsel and such other assistants as, in the judgment of the members of said Department of Elections, shall be necessary and proper for the faithful performance by it of the duties by this act imposed; provided

Limit of expense. the expense thereof shall not exceed fifteen hundred dollars in any one year in which the general election is held, which said sum shall not include the compensation of members of the Department of Elections and Registrars, to be paid upon warrants of the president of the Department of Elections in

How paid. the same manner as is provided for the payment of the legal compensation of members of said Department of Elections.[1]

Appointment of registrars. Removals. Vacancies. III. They shall, hereafter, appoint all registrars in the City of Wilmington, and shall make all necessary removals of registration officers, and fill all vacancies which from any cause occur.

Appointment of registration officers. IV. They shall in the month of June, in each year in which a general election is held, appoint for each election district in the City of Wilmington three capable persons, who shall be voters and residents in the Election District,

Qualifications. for which they shall be appointed, who shall be the registration officers of the election district for which they are appointed; one of whom shall be designated as "Registrar," and the other two "Assistant Registrars," and not more

Politics. than two of them shall be of the same political faith; provided, that the total number of registration officers in each representative district shall be divided as equally as possible between the two leading political parties, as the same shall be determined upon by the department of elections at the

Division between parties. time of making the appointments. And further, for each appointment accredited to any political party under this section the City Executive Committee of such political party shall furnish the Department of Elections on or before the

Furnishing of lists for officers. Time. first day of June of the year in which said appointment is to be made, a list of three names of properly qualified persons, from which list the Department of Elections shall make its appointments.

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1. See Sec. 5 of this Act, p. 336. See Act April 6, 1893, 19 D. L. 985-6, Secs. 6 and 9, Municipal Election. (pp. 399 and 401 of this volume.) And see Act May 13, 1891, 19 D. L. 128, Sec. 2. (p. 272 of this volume.)

Provided, however, that if the said lists of names are not furnished as aforesaid, then and in that event the Department of Elections shall appoint some suitable person, or persons, of such political party having all the qualifications provided by this section.

When list not furnished.

Department to select.

* * * * * * * * * *

The terms of office of such Registration officers shall begin on the first Tuesday in July next after their appointment and shall continue for two years thereafter, and until their successors shall be duly chosen and qualified, unless sooner removed as provided in this act.

When terms of office begin.

Term.

V. They shall also when appointing Registration officers for the several election districts of the city of Wilmington at the same time appoint in each election district in the said city one capable person, who shall be a voter and resident in the election district for which he shall be appointed, to be "Alternate Registrar" for the said election district. The term of office of said "Alternate Registrar" shall be the same as that of the Registrar, and whenever the Registrar provided for by this act shall be incapable from any cause whatsoever of performing the duties required of him by the laws of this State, the Alternate Registrar in the same election district shall act in his stead, and while acting shall possess all the powers and do and perform all the duties of a Registrar.

Alternate registrar.

Term of office.

When to sit.

Powers and duties.

VI. But nothing herein contained shall authorize or empower the Alternate Registrar to act at any time when there is a Registrar of the election district able and willing and present to act. If any Registration officer or Alternate Registrar shall remove from the election district for which he shall be appointed, or shall cease to be a voter therein, his office shall thereupon become vacant.

When alternate not to act.

Vacancies.

VII. If any vacancy or vacancies should occur in the office of Registrar, Assistant Registrar or Alternate Registrar, before the expiration of such term, from any cause whatsoever, the said Department of Elections shall appoint some suitable person or persons to fill such vacancy or va-

Vacancies in registration office.

How filled.

Term of appointee.

Qualifications, powers, etc.

cancies who shall serve for the residue of such unexpired term or terms, who shall possess the same qualifications and be qualified in the same manner, possess the same powers and perform the same duties as the original appointee or appointees. Each Registrar, Assistant Registrar and Alternate Registrar before entering upon the duties of his office, shall take and subscribe before the Clerk of the Peace of the county in which he shall reside the following oath or affirmation which the said Clerk of the Peace is hereby authorized to administer:

Oath of registration officers.

Form.

'I.....residing in..... Election District of ..... Representative District in .....County, do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of Registrar (Assistant Registrar or Alternate Registrar) for.....Election District in .....Representative District in..... County faithfully, honestly, fairly, impartially and according to the best of my ability; that I am a citizen of the United States and of the State of Delaware, and am not a candidate for any office to be voted for by the election district for which I am appointed Registrar (Assistant Registrar or Alternate Registrar), and that I am a qualified voter in said election district.'' (*a*)

(*a*) See Art. 14 of the Constitution. See the case of State vs. Matlack, 5 Penn. 401 at 420-422. (yr. 1905)

Officers becoming candidates to vacate office.

VIII. Should the said Registrar, Assistant Registrars or either of them or Alternate Registrar after taking said oath and before entering upon the active duties of the said office become a candidate for any office to be voted for by the electors of the election district for which he is appointed Registrar, Assistant Registrar or Alternate Registrar, the said office shall ipso facto become vacant and be filled by the appointment of another person to the same. After any Registrar, Assistant Registrar, or Alternate Registrar shall have entered upon the active duties of his office he shall thereby become ineligible to any office to be voted for at the next ensuing general election.

How filled.

Officers to be ineligible to be voted for.

Time of taking oath and qualifying.

SEC. 4. Each and every person appointed as aforesaid to act as Registrar, Assistant Registrar or Alternate Registrar shall qualify as such Registrar, Assistant Registrar or Alternate Registrar by taking and subscribing the oath or affirmation prescribed in the preceding section within ten days after being notified of his appointment and shall perform the duties of the office for the time for which he was appointed, unless hs shall become disqualified by sickness or otherwise. But any Registrar, Assistant Registrar or Alternate Registrar, who shall be appointed to fill a vacancy, shall qualify forthwith. And if any Registrar, Assistant Registrar or Alternate Registrar, who being appointed either for a full term or to fill a vacancy, shall refuse to qualify as aforesaid, or having qualified, shall fail or refuse to perform any of the duties of said office, he shall forfeit and pay to the State a fine of one hundred dollars, upon conviction thereof by indictment in the Court of General Sessions of the county where such offense was committed.

Appointees to vacancies to qualify forthwith.

Refusal to qualify.

Penalty.

Certificate of appointment.

Form of.

The Department of Elections shall deliver a certificate of appointment to whomsoever it shall appoint and who shall be sworn into office as Registrar, said certificate to be in such form as shall be prescribed by such Department of Elections, specifying the election district in and for which the person to whom the same is issued is appointed to serve, and the date of the expiration of his term of office. The Department of Elections shall have full power and authority to remove any of the registration officers appointed by them as aforesaid for want of requisite qualification or cause, but in either of such case such removal, unless made while the Registrars are actually on duty, on a day of registration, and for improper conduct as a registration officer, shall only be made after notice in writing to the officer sought to be removed, which notice shall set forth clearly and distinctly the reasons for removal. Any person appointed to fill any vacancy shall serve for the unexpired term of the person whose office he is appointed to fill.

Removal of registration officers.

Privileges of registration officers.

The registration officers during the time they hold such office shall be exempt from the performance of military and

Disqualification for office of registration officers.

jury duty, and no person who by the laws of the State is exempt from jury duty shall be required to serve as registration officer.

Office of Department of Elections.

Limit of rent.

How rent to be paid.

SEC. 5. The said Department of Elections may rent some suitable and convenient place in the said city, and fit up the same for an office for the use of the said Department of Elections at a yearly rental not to exceed three hundred dollars, to be paid upon warrants of the President of the Department of Elections in the same manner as is provided for the payment of the legal compensation of members of said Department of Elections.

Time of payment of compensation of members of department.

SEC. 6. The legal compensation of all members of the Department of Elections shall be paid quarterly, on the last days of March, June, September and December, by the State Treasurer out of any money belonging to the State, not otherwise appropriated.

Neglect of duty or corrupt or fraudulent practices of members of department.

Penalty.

SEC. 7. If any members of the Department of Elections, of whom any duty is required in this act, shall be guilty of any wilful neglect of such duty, or of any corrupt or fraudulent conduct or practice in the execution of the same, he shall on conviction thereof, be adjudged guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than two years, or by a fine of not more than two hundred dollars, or both.

Department to notify Attorney General of violations of act.

SEC. 8. It is hereby made the special duty of the Department of Elections to notify the Attorney General of all violations under this act.

SEC. 9. All Acts and parts of Acts supplied by or inconsistent with this Act are hereby repealed.

Approved May 20, A. D. 1898.

AN ACT more clearly defining the duty of the Department of Elections in the City of Wilmington. 21 D. L. 146.

Powers and privileges of Department of Elections.

SECTION 1. That the Department of Elections of the City of Wilmington shall have and exercise all the powers and privileges in respect to elections, which shall hereafter be held in said city, which the Department of Elections had and possessed by virtue of an act of the General Assembly, entitled "An Act to provide for the Registration of Voters in the City of Wilmington," passed at Dover, May 13, A. D. 1891,[1] shall select election places in the respective districts, appoint all election officers with power to remove the same, and have all other powers and privileges exercised and possessed by said Department of Elections, in respect to elections under this act.

Not to impair other laws.

SEC. 2. Nothing in this act shall be construed to repeal or impair any act or part of an act passed by the present session of the General Assembly.

Approved June 1, A. D. 1898.

AN ACT in regard to General Election.

Act June 1, 1893, 21 D. L. 94.

General election, where held.

SECTION 1. The general election in and for the several counties of this State, on the Tuesday next after the first Monday of November, shall be held in the respective election districts of the Representative districts of said counties, at the places hereinafter appointed for that purpose, that is to say.

FOR THE CITY OF WILMINGTON.

Department of Elections to designate voting places in Wilmington.

The Department of Elections for the City of Wilmington, established by virtue of an act of the General Assembly, entitled "An Act creating a Department of Elections for the City of Wilmington," approved May 20th, A. D. 1898, shall at the time of dividing the said city into election districts and establishing the boundaries thereof, designate some suitable and proper place in each election district for holding the elections therein, and all persons entitled to vote in the said several

Who to vote.

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1. For said powers and duties see 19 D. L. p. 128, Sec. 3, et seq., at p. 273 of this volume.

respective election districts thus established, shall vote at the place designated and appointed by the said Department of Elections, for holding elections in the said several respective election districts.

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Approved June 1, A. D. 1898.

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22 D. L. 117.

AN ACT in relation to the Department of Elections for the City of Wilmington.

Department of Elections to be increased to five members.

SECTION 1. That the Department of Elections for the City of Wilmington, as established and constituted by Chapter 39, Vol. 19, Laws of Delaware, and as constituted and created by Chapter 40, Volume 21, Laws of Delaware, be and the same is hereby enlarged to, and made to consist of five members, (*a*) for all general or special elections to be hereafter held in said City.

(*a*) The Department of Elections, prior to this Act, used to consist of three members. The phrase, "for all general or special elections to be hereafter held in said city," raised a doubt as to the powers of the said Department in *municipal* elections, the contention being, that for city elections the old Department of three members was still the proper Department, and for "general or special elections" held in said city, the Department consisted of five members. It was also contended, that the Act was passed by a majority vote only (not two-thirds), and so did not apply to municipal elections in Wilmington. The matter was taken into Court, and the Court, (it being the Court in Banc) decided that the Department of five members had charge of all elections,—general, special and *municipal*, held in the City of Wilmington.

Lore, C. J.: "And now, to wit, this fifteenth day of April, A. D. 1903, the questions of law arising in this case, directed by the Superior Court, in and for New Castle county, to be heard by the Court in Banc, having been fully argued by counsel of the respective parties and duly considered by the Court, we are of the opinion that the defendants, Jacob H. Lewis, and Thomas A. D. Hutson, are by virtue of the provisions of the laws of the State of Delaware, and their appointments and commission by the Governor, members of the Department of Elections for the City of Wilmington, and as such, of right, hold, use and exercise the office of members of said department, among the rights and duties of which office is the transfer and registration of voters preparatory to holding the municipal election in said city, and that therefore the demurrer of the plaintiff should be overruled. It is ordered that this opinion be certified to the said Superior Court for New Castle county."

This was signed by all five judges.

State Delaware ex rel Herbert H. Ward, Attorney General vs. Lewis and Hutson. Unreported (yr. 1903).

Governor to appoint two suitable persons.

SEC. 2. That the Governor be and he is hereby authorized and empowered to appoint and commission two suitable

persons, residents of the City of Wilmington, to be members of the said enlarged Department of Elections for the City of Wilmington.

One for two years, one for three years.

SEC. 3. That the term of office of one of the said two members shall be two years and the term of the other and remaining member shall be [1]three years, and at the expiration of said two terms and thereafter every three years, the Governor shall appoint suitable persons to succeed the said members for the term of three years.

Thereafter Governor to appoint every three years.

Powers of members so appointed.

SEC. 4. That the members so appointed shall have, possess, enjoy and exercise all and every the rights, powers, and privileges which are now held, possessed, enjoyed and exercised by the present members of said Department and vested in them by law, and shall perform each and every duty which the present members of said Department are now required to perform by law; and they shall each receive the same compensation as now fixed by law for the other three members, which shall be paid by the State Treasurer, at the same time and in the same way as now provided by law for the payment of the compensation of the present members of said Department.

Duties and compensations of.

Board to consist of five members.

SEC. 5. That from and after the first day of April A. D. 1901, the Department of Elections shall consist and be composed of five members, to wit: the three members who are now members of said Department and the two members appointed by the Governor; and the said five members shall constitute the Department of Elections for the City of Wilmington.

Jurisdiction of.

The Department of Elections for the City of Wilmington so constituted as aforesaid, shall have a full and complete jurisdiction over all and every the matters and things now vested by law in the Department of Elections for the City of Wilmington, as at present constituted, and shall exercise every power, privilege, right and duty which now belongs to the said

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1. The terms of office of all members of the Department of Elections are now six years. See Act of March 9, 1907, 24 D. L. p. 153. (p. 341 of this volume.)

Department of Elections for the City of Wilmington, as fully and completely as the said Department of Elections now by law is authorized to do.

Organization of.

SEC. 6. That the Department of Elections for the City of Wilmington, so constituted as aforesaid, shall meet for organization on the first Tuesday in April, A. D. 1901, and after taking the oath of office prescribed by the Constitution of the State, shall proceed to elect one of their number to be the president of the Department and shall also elect a clerk. Three members shall be sufficient for the purpose of organization and shall constitute a quorum for the transaction of business. The said Department shall have the power to make rules for its government not inconsistent with the Constitution and Laws of the State.

To make rules for government.

All records, books, papers, &c., to be delivered to president.

SEC. 7. That it shall be the duty of the present Department of Elections for the City of Wilmington, and every member thereof, and every officer, clerk or agent thereof, and every other person having possession or control of any records, books, papers, or other property of or relating to or connected with said Department of Elections, immediately after the organization of the Department created by this Act, to surrender and deposit the same with the President of the Department elected pursuant to the provisions of Section 6 of this Act, or with such other person as the said President shall order and direct. And in case the said members, officer, clerk or any other person having possession as aforesaid, shall neglect or refuse on demand of the said President to be elected as aforesaid, to deliver up and surrender any of such records, books, papers or other property as aforesaid, each and every person neglecting or refusing as aforesaid, shall be guilty of a misdemeanor and upon conviction thereof, shall forfeit and pay a fine of five hundred dollars, and be imprisoned for a term of one year, or until the said records, books, papers or other property shall be delivered into the custody of the said President.

Penalty for refusal.

SEC. 8. That all Acts or parts of Acts inconsistent herewith or manifestly superseded hereby, be and the same are hereby repealed.

Approved March 8, A. D. 1901.

AN ACT Making the Terms of Office of all Members of The Department of Elections for the City of Wilmington, hereafter Appointed to said Office for Full Terms under Chapter 70, Volume 22, Laws of Delaware, Six Years. 24 D. L. 153.

SECTION 1. That, from and after the approval of this Act, the terms of office of all members of The Department of Elections for the City of Wilmington, hereafter appointed to said office for full terms, under Chapter 70, Volume 22, Laws of Delaware, shall be six years, and said appointments shall be so made: provided, however, that all appointments, hereafter made to said office under said Chapter 70, Volume 22, Laws of Delaware, to fill vacancies therein, shall be made for the residue of the then unexpired term.[1] Terms of office of Department of Elections of City of Wilmington made six years.

SEC. 2. That all provisions of law inconsistent herewith, be and the same are hereby repealed.

Approved March 9, A. D. 1907.

AN ACT to provide for the Purity of Primary Elections in New Castle County. 20 D. L. 375.

SECTION 1. A primary election within the meaning of this act is an assemblage of voters who are members of any political party, organization or association duly convened for the purpose of nominating a candidate or candidates for public office, or for the purpose of selecting delegates or representatives to any political convention thereafter to be held for the purpose of selecting candidates as aforesaid, which at the last general election before the primary election polled at least ten Primary election defined.

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1. This Act amends the Act of March 8, 1901, 22 D. L. p. 117, Sec. 3. See p. 339 of this volume.

per centum of the entire vote of the State, or any division or sub-division thereof, for which the nominations are made.

To be by ballot.

SEC. 2. That all primary elections hereafter to be held by any political party, organization or association, for the purpose of nominating or selecting candidates to be voted for at any subsequent election, or for the purpose of selecting delegates or representatives to any political convention thereafter to be held for the purpose of selecting candidates as aforesaid, shall be by ballot.

Throughout county at same time.

The primary election for any political party, organization or association, for the nomination of the same class of candidates to be voted for at any subsequent election, or for the selection of delegates or representatives to any political convention thereafter to be held for the purpose of selecting candidates as aforesaid, shall be held in the several hundreds at the same time. Notice of the time and places for holding all primary elections shall be given by publishing the same once each day for at least five days before the time of holding the same, in one or more daily newspapers printed in New Castle County.

No two parties on same day.

No two political parties, organizations or associations shall hold their primary election on the same day.

Not more than two days for each party.

The number of days that shall be allowed for holding primary elections to nominate persons to be voted for at a general election and to nominate persons to be voted for at municipal elections in the City of Wilmington, shall not exceed two for each political party, organization or association in any one year.

To be held by board of election.

SEC. 3. That every primary election hereafter to be held by any political party, organization or association for the purpose of nominating or selecting candidates by ballot to be voted for at any subsequent election, or for the purpose of selecting delegates or representatives to any political convention thereafter to be held for the purpose of selecting candidates as aforesaid, shall be held by a Board of Election officers consisting of one inspector, who shall be a judge and the presiding officer, and two other judges at each voting precinct; and if it should so happen that but one person as presiding officer or judge should have been appointed by such political party, organization or association to hold such primary election, or hav-

How composed and appointed.

ing been appointed and being absent, the electors there present at the hour appointed for opening such primary election shall proceed without ballot to choose from among the qualified voters of the election district there present a presiding officer, judge or judges as the case may require and in choosing such presiding officer, judge or judges, two qualified voters of the district to be nominated and appointed by the electors shall be the judge or judges.

Inspector.

SEC. 4. That the inspector of each election district for all primary elections hereafter held in New Castle county, (outside the City of Wilmington) under the direction of any political party, organization or association shall be the person who was the candidate of the political party, organization or association holding such primary election for the office of inspector at the general election next preceding such primary election; provided, that in cases where the primary election is held without regard to the division of any hundred into election districts for general election purposes, the person who was the candidate for the office of inspector as aforesaid, for the election district in which the place of voting at such primary election is situated shall be the inspector of such primary election. The two judges, as provided by Section 3 of this act, shall be appointed by the regularly organized and constituted County Committee or governing authority of the political party, organization or association holding such primary election. The inspector and judges of all primary elections hereafter held in the City of Wilmington shall be appointed by the regularly organized and constituted County Committee or governing authority of the political party, organization, or association holding such primary election, from the persons designated to conduct the next subsequent general election. The term of office of said inspectors and judges shall be for one year. Said committee or governing authority shall designate which person shall act as inspector, and which persons shall act as judges of such primary elections. The persons so appointed shall be residents of the primary election district for which they are appointed. In all cases when primary election officers are ap-

Appointment of Judges.

Inspector and judges in Wilmington.

Terms of office.

Qualifications.

pointed as herein provided, representations[1] of the interest of each candidate shall be as nearly equally divided as possible as to the board of election officers. If any person designated in this section to be inspector of any primary election shall die, remove from his primary election district, or be for any reason physically unable to attend in his primary election district at any primary election held by his political party, organization or association, then the regularly organized and constituted County Committee or governing authority of the political party, organization or association holding such primary election shall appoint an inspector to fill the vacancy thereby created. If any political party, association or organization desires to hold a primary election for the purpose of nominating candidates for public office, and there is no recognized member of said political party, association or organization among the persons designated in this act to serve as inspectors and judges of such primary elections, or not a sufficient number of recognized members for said purpose, then the regularly organized and constituted County Committee or governing authority of such political party, association or organization shall appoint the inspector and judges to hold such primary election. In case of refusal or neglect on the part of any person designated by this act or appointed pursuant to the provisions hereof to be an inspector or judge, as the case may be, of any primary election, to qualify according to the requirements of this act, or to serve, or to act, he shall be liable to a penalty of two hundred dollars, recoverable by the County Treasurer of New Castle County, by civil action in any court of record, in the name of the County Treasurer and for the use and benefit of New Castle County; and the failure on the part of any such person to comply with any of the requirements of this act, preliminary to opening the polls, or to attend on the day of any primary election during his term, unless prevented by sickness or other sufficient cause, the burden of proof of which shall be upon the delinquent, shall be deemed a refusal within the meaning of this act. The election officers whose ap-

Vacancy.

Primary election of party not having an inspector.

Refusal of appointee to act.

Penalty.

How recovered.

What deemed refusal.

1. So enrolled.

pointment is provided for in this section, shall be appointed at least two weeks before such primary election is to be held. When appointed.

Sec. 5. That before opening the election, the presiding officers and judges shall each take and subscribe an oath according to the following form, viz.: I do solemnly swear (or affirm) that in the primary election to be held on the..... .....day of ..... A. D. ....., I will not knowingly or wilfully receive or consent to the receiving of the vote of any alien, and also that I will not receive or consent to the receiving of the vote of any person whom I shall believe not entitled to vote, unless my associates shall adjudge such person to be entitled to vote. That I will not receive or reject, nor concur in receiving or rejecting any vote through partiality or under bias and that I will determine every matter that shall come before me and perform every act and duty by law required of me, touching the said primary election, truly, faithfully and impartially, according to the best of my skill and judgment; that I will cause the ballots that shall be taken at said primary election to be fully read and ascertained, and a true statement thereof to be made, according to the best of my knowledge and ability; that I have not received, nor will not receive directly or indirectly from or through any candidate to be voted for at said primary election, or any representative of any such candidate or other person, any money, pay, or other valuable thing or reward; that I have not been promised, or in any manner been led to believe that I will at any time directly or indirectly receive any money, pay, or other valuable thing or reward from such candidate or representative of such candidate or other person other than that provided by this act, and if I shall discover any partiality, unfairness or corruption in the conducting of the said primary election, I shall disclose the same to the executive authority that shall have directed the holding of the said primary election, and to the Attorney General, to the end that the subject may be investigated, so help me God (or so I solemnly affirm). (a) Oath of officers.

(a) In the case cited below, the defendant objected to the above oath being put in evidence, on the ground that the oath contained in Art. 14 of the Constitution was the only legal oath to be taken; in other

words Art. 14 of the Constitution repealed Sec. 5 of the above Act. The Court admitted the oath (Sec. 5) in evidence, without deciding the question. (420-422.)

"The oath which the primary election law provides shall be administered to election officers, is admissible in evidence although it is not the oath which the Constitution provides shall be administered to public officers."

State vs. Matlack et al, 5 Penn. 401 at 402. (yr. 1905) (Syllabus.)
See Sec. 5, "a" of this Act.

Clerks.

SEC. 6. That each of the said judges, after being duly qualified, shall choose one clerk of the primary election to be held, to whom the presiding officer or one of the judges who is hereby authorized to administer the same, shall on the day of such primary election administer the oath or affirmation, which shall be subscribed as follows, viz: I do solemnly

Oaths.

swear (or affirm) that as clerk of this primary election to be this day held, I will not use or assent to any falsehood, fraud or deceit, and that I will keep the polls and perform my duties truly, faithfully and impartially, so help me God (or so I solemnly affirm).

Qualifier of primary election officers.

SEC. 7. That the regularly organized and constituted County Committee or governing authority of any political party, organization or association holding such primary election shall, at any time within ten days of the day that the first primary election is held in each year of a general elec-

Appointment

tion, appoint one person for each Levy Court district in New Castle county as a Qualifier of Primary Election Officers, whose duty it shall be to administer to the inspectors and

Duties.

judges of the primary elections held in their respective districts the oath or affirmation prescribed in Section five of this act, and shall deliver to the chairman of the committee or governing authority appointing him the oaths or affirmations subscribed by the inspectors and judges as aforesaid, on or before twelve o'clock noon on the day previous to such primary election. Each person so appointed shall, upon the certification by the chairman of the committee or governing authority appointing him, that such person has performed the duties required of him by this act, be paid by the Levy Court of the county in which he shall reside the sum of ten

Compensation.

dollars.

In case any inspector or judge is chosen by the electors present at the time of opening the primary election, pursuant to Section three of this act, the oath (*a*) or affirmation prescribed in Section five of this act shall be administered to the inspector or judge so chosen by any officer of primary elections there present who has been qualified by the Qualifier of Primary Election Officers, the said officer being hereby empowered to administer said oath or affirmation; and in case there is no such qualified officer there present the said oath or affirmation shall be administered to the judges by the presiding officer, and by one of them to him, each of whom are hereby empowered and directed to administer such oaths or affirmation.

Oath of officer appointed on day of election.

How administered.

(*a*) See Sec. 5, p. 345 of this volume. And see the case of State vs. Brand, 2 Marv. 459 at 462. (yr. 1897)

SEC. 8. The person appointed Qualifier of Primary Election Officers, pursuant to the provisions of Section seven of this act, shall within two days after the appointment and before entering upon his duties, take and subscribe an oath (or affirmation) according to the following form, viz:

Oath of qualifier.

I do solemnly swear (or affirm) that, as Qualifier of Primary Election Officers, I will not use or assent to any falsehood, fraud or deceit, and that I will perform my duties truly, faithfully and impartially, so help me God, (or so I solemnly affirm).

The oath or affirmation prescribed in this section shall be administered by the chairman of the regularly organized and constituted County Committee or governing authority of the political party, organization or association for which said Qualifier of Primary Election Officers was appointed. The said chairman is hereby empowered and directed to administer oaths and affirmation pursuant to the provisions of this act. Any person appointed Qualifier of Primary Election Officers who shall fail to qualify as aforesaid, shall upon conviction therefor, be adjudged guilty of a misdemeanor, and shall be punished for each such offence by a fine not exceeding one hundred dollars.

How administered.

Chairman of County Committee may administer certain oaths.

Failure of qualifier to take oath.

Misdemeanor.

Punishment.

SEC. 9. * * * * * * * * * *

Time for registration in Wilmington.

SEC. 10. That the time for the ascertainment and registration, pursuant to the provisions of Chapter thirty-nine Volume nineteen, Laws of Delaware, of the persons residing in the City of Wilmington who are or may become qualified to enjoy the right of an elector at the general election, shall hereafter be on three successive Saturdays, beginning with the second Saturday in August next preceding the general election, and on the third Saturday in the October next preceding the general election.[1] That the inspectors of election for the City of Wilmington shall hereafter be appointed by the Department of Elections for said city in the month of June in each year in which a general election is held.

Inspectors for Wilmington appointed.

Voting books of qualified voters for primary elections outside of Wilmington.

SEC. 11. That the Sheriff of New Castle county shall, in addition to the registers and things he is now required by law to furnish to the registrar of each hundred or election district of his county (outside of the City of Wilmington), hereafter, before the first day of any registration of voters of said county (outside of the City of Wilmington) made under the provisions of Chapter thirty-eight, Volume nineteen, Laws of Delaware, as amended by this act, prepare and furnish two books for each of said registrars in New Castle county (outside of the City of Wilmington) to be known by the name of "Voting Books of Qualified Voters for Primary Elections," for alphabetical lists of all persons whose names may be entered on the registers pursuant to Chapter thirty-eight, Volume nineteen, Laws of Delaware. Said books shall be ruled in parallel columns and so arranged as to admit of the convenient entry in alphabetical order of the name of every person who may be entered on the register aforesaid as a "qualified voter" or "may become qualified voter," and in the parallel column opposite the name of such person the following particulars, to wit: First, his residence; second,

Entries.

1. Act of May 27, 1898, 21 D. L. p. 69, Sec. 2, (pp. 301-302 of this volume) changes registration days to the first Saturday in August, the third Saturday in September and the third Saturday next preceding the day of election. The time of revision of registration for Municipal Elections in Wilmington is the fourth Saturday previous to the day of election. See Sec. 18 of this Act, as amended, p. 352 of this volume.

his color;[1] third, the day of his registration. Said books shall contain six parallel columns for the entry of the word "voted," together with the date of voting. When any registrar or board of registration, at any of the sittings hereinbefore provided, shall enter in his register the name of any applicant for registration as a "qualified voter" or "may become qualified voter," he shall immediately thereafter enter, in the presence of such applicant, if he remains in attendance, in its proper alphabetical place in the "Voting Book of Qualified Voters for Primary Elections" hereinbefore provided for, the name of such applicant and also his residence, * * * and date of registration. The said two "Voting Books of Qualified Voters for Primary Elections" shall be compared and certified on the last day of registration in the month of August, in the same manner and by the same persons as now required by Section fifteen of Chapter thirty-eight, Volume nineteen, Laws of Delaware. It shall be the duty of the registrar, within one secular day after the certification by the board of registration as herein required, to deliver to the Sheriff of New Castle county, who shall safely keep the same, and two "Voting Books of Qualified Voters for Primary Elections" required by this act.

To be compared and certified, how.

To be delivered to sheriff.

SEC. 12. That the Department of Elections for the City of Wilmington shall, in addition to the registers and things they are now required by law to furnish to the inspectors of elections in said city, hereafter, before the first day of any registration of voters of said city made pursuant to the provisions of Chapter thirty-nine, Volume nineteen, Laws of Delaware, as amended by this act, prepare and furnish to the inspectors of elections in every election district in said city, now existing or hereafter created, two "Voting Books of Qualified Voters for Primary Elections," said books being in the same form as designated in Section eleven of this act. The said two "Voting Books of Qualified Voters for Primary Elections," shall be compared by the inspectors, on the last day of registration in the month of August, to see

Department of Elections to furnish Voting Books of Qualified Voters for Primary Elections in Wilmington.

Form.

To be compared.

1. Amended. See Chapter 64, Volume 22.

that they agree with each other in every particular, and also with the register to see that every name entered on the register as a "qualified voter" or "may become qualified voter" is entered in its proper alphabetical place on each of the two "Voting Books of Qualified Voters for Primary Elections," together with the residence, * * * and date of registration. And if any name in the registers which ought to have been entered on the said alphabetical list shall have been omitted therefrom, it shall be the duty of said inspectors to enter such name in its proper alphabetical place on the alphabetical list, together with the proper entries as they appear on the said registers. And it shall be the further duty, in such comparison of the alphabetical list with the registers, to make such corrections in the alphabetical lists as will make the names and entries appearing on the alphabetical lists agree with the same names and entries as entered on the registers. It shall be the duty of the said inspectors, immediately after their last sitting in the month of August, to append to each of said alphabetical lists of "qualified voters" contained in said "Voting Books of Qualified Voters for Primary Elections" a certificate, verified by the oath or affirmation of the inspectors, or at least two of them, that the said "Voting Books of Qualified Voters for Primary Elections" contain a complete list of the "qualified voters" and "may become qualified voters" of said Election District as the same are entered in the Registers of voters of such election district. After said two "Voting Books of Qualified Voters for Primary Elections" have been compared and certified as aforesaid, the said inspectors in each of said election districts shall, immediately after said certification, return the same to the said Department of Elections.

Corrections.

Certificate.

Verified by oath.

Books to be delivered to Department of Elections.

Department of Elections to compare and correct books, when.

Person having registered twice to be stricken off.

SEC. 13. It shall be the duty of said Department of Elections to compare and correct said two "Voting Books of Qualified Voters for Primary Elections," at any time before the day the first primary election is held in the year of a general election, and, when it shall appear by any date in their possession that any person has registered in more than one election district, they shall, upon due inquiry, strike his

name from the said "Voting Books of Qualified Voters for Primary Elections" of any and all election districts in which he is not a "qualified voter," and shall, opposite his name, state the reason therefor. Said two "Voting Books of Qualified Voters for Primary Elections," in each election district of the City of Wilmington, shall be preserved and delivered by said Department of Elections as hereinafter prescribed and directed. Disposition of books.

SEC. 14. That from and after the first day of June, A. D. 1898, the terms and powers of office of the inspectors of elections for the City of Wilmington, who shall then be in office, shall be and the same are hereby declared to be terminated and ended. Terms of office of inspectors in Wilmington terminated after June 1, 1898.

SEC. 15. That the division of the City of Wilmington into election districts, as is directed by sub-division one of Section three of Chapter thirty-nine, Volume nineteen, Laws of Delaware, shall hereafter be made on or before the first day of June instead of on or before the first day of September, as therein provided.[1] Division of Wilmington into districts to be by June 1.

SEC. 16. Every inspector of any primary election, poll clerk, or other officer or person having the custody of any "Voting Book of Qualified Voters for Primary Elections," oath, return of votes, certificate, poll list, or any paper, document, or evidence of any description in this act directed to be made, filed or preserved, who is guilty of stealing, wilfully destroying, mutilating, defacing, falsifying or fraudulently removing or secreting the whole or any part thereof, or who shall fraudulently make any entry, erasure or alteration (a) therein, except as allowed and directed by the provisions of this act, or who permits any other person to do so shall, upon conviction thereof, be adjudged guilty of a misdemeanor and shall be punished for every such offence by imprisonment in the county jail for a period not exceeding Officer of election stealing, &c., election books &c. Misdemeanor. Punishment.

1. See note to this section, viz Sec. 3, subdivision one of above Act, p. 331 this volume.

two years, or by a fine of not more than two hundred dollars, or both.[1]

(*a*) These books in a Court of law are the best evidence of one's *right* to vote, but one can be asked the question whether or not he *voted*, without the books having to be produced.
State vs. Matlack, 5 Penn. 401 at 402. (yr. 1905) (Syllabus.)

Officer committing or advising, &c., commission of wrongful acts.

Misdemeanor.

Punishment.

SEC. 17. Every person not an officer, such as is mentioned in the last preceding section, who is guilty of any of the acts specified in said section, or who advises, procures or abets the commission of the same, or any of them, shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and for every such offence shall be punished by imprisonment in the county jail for a period not exceeding two years, or by a fine of not more than two hundred dollars, or both.[2]

Amendment. Act of March 24, 1903, 22 D. L. 593.

Time for holding primary elections.

Time for revision of registration in Wilmington.

Department of Elections.

Duties of

SEC. 18. [That the time for holding any primary election shall be after the first day of registration in the month of August, for the ensuing general election, and the time for holding primary elections in the City of Wilmington to nominate candidates to be voted for at a municipal election shall be in the month of May after the day for the revision of the registration of voters. The time for the revision of the registration of voters in the City of Wilmington for Municipal election shall be and the same is hereby made the fourth Saturday previous to the day set for holding the election for municipal officers in the said city. The members of the Department of Elections for the City of Wilmington, in addition to the duties now required of them by law, shall demand of the Clerk of the Peace of New Castle County between the fifth and tenth of April of any year in which a municipal election is held, and it shall be the duty of the said Clerk of the Peace, to deliver to the said Department of Elections for the City of Wilmington, within two days after said demand, the original "Voting Books of Qualified Voters" and "Registers" for all the election districts in the City of Wilmington; and it shall be the duty of the Depart-

1. See Act May 13, 1891, 19 D. L. p. 154, Sec. 40. (p. 296 of this volume.)

2. See Sec. 41 of above Act, p. 297 of this volume.

ment of Elections for the City of Wilmington to revise and prepare the "Voting Books of Qualified Voters" as provided for General Elections, and all persons and only they whose names appear on the said "Voting Books of Qualified Voters" (*a*) shall be entitled to vote at a primary election to nominate candidates to be voted for at the subsequent municipal election in the City of Wilmington, nor shall any person whose name is on the said "Voting Books of Qualified Voters" be disqualified from voting at the municipal election or be compelled to re-register because of the fact that he failed to vote at the previous general election. The time for opening the polls for the purpose of conducting the primary election under the provisions of this Act shall be one o'clock in the afternoon, and the time for closing the polls at such primary election shall be seven o'clock in the evening.]

Who may vote at municipal primary election.

Time for opening polls.

Time for closing.

SEC. 19. [That whenever a political party, organization or association desires to hold a primary election for the purpose mentioned in Section 2 of Chapter 393, the chairman or secretary of the regularly organized and constituted county or city committee or governing authority of such political party, organization or association, shall notify by letter the respective parties having the custody of the "Voting Books of Qualified Voters for Primary Elections" or the "Voting Books of Qualified Voters" in this Act and in Chapter 393, Volume 20, Laws of Delaware, provided, of their intention of holding a Primary election, stating the day on which they desire the election held, which notification shall be at least two weeks prior to the time for holding such primary election. If no previous notice shall have been received by the said parties from no other political party of its intention to hold a primary election on that day, the said party shall, on or before twelve o'clock of the day for holding such primary elections for that political party, organization or association, deliver the two "Voting Books of Qualified Voters for Primary Elections" provided for in Chapter 393, Volume 20, Laws of Delaware, in case of a County Primary Election, or the two "Voting Books of Qualified Voters" in case of a mu-

Amendment. Act of March 24, 1903, 22 D. L. p. 594.

Notice of desire to hold primary election.

Chairman or secretary of political party to notify custodians of voting books, etc.

Notification —two weeks prior to election.

Delivery of voting books.

nicipal primary election, for each general district that may be contained in the primary election in the hundred or election district of the County or of the City of Wilmington to which such "Voting Books of Qualified Voters for Primary Elections" or "Voting Books for Qualified Voters" shall apply. And it shall be the duty of the said inspector to have the same at the place of holding the primary election at the time of opening the polls on primary election day. If any inspector shall refuse, neglect or fail to have the said "Voting Books of Qualified Voters for Primary Elections" at the place of holding the primary elections for any general or special election in the County, or the "Voting Books for Qualified Voters," at the place of holding the primary election for any municipal election in the City of Wilmington. at the time designated in this Act, he shall, upon conviction therefor, be adjudged guilty of a misdemeanor, and shall be punished for each such offense by imprisonment in the county jail for a period not exceeding ninety days, or by a fine not exceeding one hundred dollars, or both.]

Duty of inspectors.

Neglect.

Misdemeanor.

Penalty.

Method of receiving votes.

SEC. 20. The qualification of electors under this act shall be such as the political party, organization or association authorizing such election may prescribe and publish, and in default of any prescribed or published rule, the past usages of such political party or organization shall be recognized and adopted, and ignorance of such past usages shall be no defence against any of the penalties of this act. As each person shall apply to vote at any primary election,

Amendment. Act of March 24, 1903, 22 D. L. p. 595.

Voters to vote at the primary election of only one political party.

[For any general or special election in the county, the officers thereof shall examine the "Voting Books of Qualified Voters for Primary Elections" provided by Chapter 393, Volume 20, Laws of Delaware, and as each person shall apply to vote at any primary elections held for any municipal election, the officer thereof shall examine the "Voting Books of Qualified Voters" provided by this Act, and if they find thereon the name of the person applying to vote and be satisfied that he is

the person whose name is so registered, they shall enter the word "voted" after his name and such voter shall not be permitted to vote at any succeeding primary election held for that particular election, by any other political party, organization or association. The entry of the word "voted" as aforesaid shall be in such a manner as to indicate at what party primary election the voter has voted. No person whose name is not contained in the "Voting Books of Qualified Voters for Primary Elections," shall be allowed to vote or participate in any primary election for any general or special county election hereinafter held, and no person whose name is not contained in the "Voting Books of Qualified Voters" shall be allowed to vote or participate in any primary election for any municipal election hereafter held. It shall be the duty of the inspector within two days after the day of the primary election to return the said "Voting Books of Qualified Voters for Primary Elections" or "Voting Books of Qualified Voters," used by him at any primary election, to the person or persons from whom he received the same, who shall preserve them, and in case of the "Voting Books of Qualified Voters," within ten days after they have been returned to the Department of Elections for the City of Wilmington, the said Department shall deliver the said Books and Registers to the Clerk of the Peace of New Castle County, taking from them a receipt. If any inspector shall neglect, refuse or fail to return said "Voting Books" as directed in this section, the said inspector so neglecting, failing or refusing shall, upon conviction therefor, be adjudged guilty of a misdemeanor and shall for every such offense be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail for a period not exceeding thirty days, or both.]

Qualification of voters.

Inspectors to return books to Clerk of the Peace.

Neglect of duty.

Misdemeanor.

Penalty.

SEC. 21. If at any primary election, the presiding officer and judge shall knowingly and wilfully receive, (*a*) or advise, or consent to the receiving of the vote of any person not entitled to vote at such primary election or if such presiding officer or judge shall knowingly and wilfully refuse (*b*) to receive the vote of any person entitled to vote at such primary election, every such presiding officer or judge shall, for every such of-

Refusing legal vote.

Penalty.

fence, forfeit and pay the sum of one hundred dollars to any person who will sue for the same, or shall, for every such offence, upon conviction therefor, be adjudged guilty of a misdemeanor, and be fined not less than one hundred dollars, and, in either case, be imprisoned until the fines, forfeitures and costs are paid in full or discharged by the court.

Misdemeanor.

Punishment.

(*a*) In the case below cited, an election officer was indicted for "knowingly and wilfully taking an illegal vote." (555)

The Court: "Did the defendant take the vote knowing it to be an illegal vote? Defendant acted in a judicial capacity, and is not to be held liable criminally for a mere error of judgment. * * But if such officer, *knowing* a vote to be illegal, takes it corruptly, his position cannot protect him from the just punishment of his offence."

State vs. M'Donald, 4 Har. 555 at 556. (yr. 1847)
State vs. Frest, 4 Har. 558. (yr. 1847)

(*b*) For refusing to take a legal vote, see the case of
State vs. Porter, 4 Har. 556 at 557. (yr. 1847)

Voting or attempting to vote illegally.

SEC. 22. If at any primary election hereafter held by any political party, organization, or association, as provided in this act, any person falsely personate any elector or other person, and vote or attempt or offer to vote in or upon the name of any person, whether living or dead, or in or upon any false, assumed or fictitious name, or in or upon any name not his own, or shall knowingly, willingly or fraudulently vote more than once for any candidate for the same office, or shall vote in any other primary election district than the one in which he is a bona fide resident, or vote or attempt to vote more than one ballot at any primary election district, or shall solicit from any candidate or from any other person, or shall receive, directly or indirectly, from such candidate or from any other person any money, or promise of place or position, or any valuable consideration of any kind, for his vote or support, or if any person shall vote at the primary election of more than one political party, organization or association, held for the purpose of nominating or selecting a candidate or candidates to be voted for at any subsequent general election, or for the purpose of selecting delegates or representatives to any political convention thereafter to be held for the purpose of selecting candidates as aforesaid, before any one general election, or shall vote or attempt to offer to vote in any primary election district, or having once voted shall attempt or offer

Receiving or soliciting reward.

Voting at primary election of more than one party.

to vote again, or shall knowingly, wilfully or fraudulently do any unlawful act to secure an opportunity for himself or for any other person to vote, or shall by force, threat, menace, intimidation, bribery or reward or offer to or promise (a) thereof, or otherwise unlawfully either directly or indirectly influence or attempt to influence any elector in giving his vote, or shall promise any place or position for the purpose of securing any voter's support or prevent or hinder or attempt to prevent or hinder any qualified voter from freely exercising the rights of suffrage, or any such means induce or attempt to induce any such voter to refuse to exercise any such right, or shall, by any such means or otherwise, compel or induce or attempt to compel or induce any inspector of any primary election or other officer of any primary election in any primary election district to receive the vote of any person not legally qualified or entitled to vote at the said primary election in such district, or shall knowingly, wilfully or fraudulently interfere with, delay or hinder in any manner any inspector of any primary election, poll clerk or other officer of any primary election in the discharge of his duty, or by any such means or other unlawful means, knowingly, wilfully or fraudulently counsel, advise, induce or attempt to induce any inspector of any primary election, poll clerk or other officer of any primary election, whose duty it is to ascertain, proclaim, announce or declare the result of any such primary election, or to give or make any certificate, document, report, return or other evidence in relation thereto, to refuse or neglect to comply with his duty, or to violate any law regulating the same, or to receive the vote of any person in any primary election district not entitled to vote therein or to refuse to receive the vote of any person entitled to vote therein, or shall aid, counsel, or advise, procure or assist any voter, person or inspector of any primary election, or other officer of such primary election, to do any act by law forbidden, or in this act constituted an offence, or to omit to do any act by law directed to be done, every such person shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and shall, when not herein otherwise particularly specified, be punished for every offence by imprisonment in

Attempting any unlawful act.

Influencing voter.

Influencing officer of election to do illegal act.

Interference with election.

Advising or influencing election officer to neglect his duty.

Misdemeanor.

Punishment.

the county jail for not more than two years, or by a fine of not more than two hundred dollars, or both.

(a) *Booth, C. J.*: "To offer it, is to present it for acceptance or rejection; to promise it, is to make a declaration or engagement that it shall be given."
State vs. Harker, 4 Har. 559 at 561. (yr. 1847)
Godwin vs. State, 1 Boyce 173 at 182. (yr. 1910)

Other offences.

Any act or deed declared an offence by the general laws of this State concerning elections and not herein particularly mentioned, shall also be an offence in all primary elections, and shall be punished in the same form and manner as is

Punishment.

provided for the punishment of similar offences by the general laws; and all the penalties and provisions of the general laws shall apply in such cases with equal force, and shall be as effective as though fully set out in this act.

Territory in primary election district.

SEC. 23. That the regularly organized and constituted County Committee or governing authority of the political party, organization or association holding any primary election shall, at least two weeks before such primary election is held, determine what territory shall comprise a primary election district; provided, that such primary election districts shall be so formed that the whole of each election district for the general election shall be in one primary election district. They shall also designate the place for holding the primary election in each primary election district and secure the room for holding the same. Said room, in all cases where one primary election district comprises more than one general election district, shall be in the general election district where the greatest number of votes were polled by the political party, organization or association holding such primary election at the general election next preceding the said primary election. They shall also designate each of said districts by appropriate titles or distinctions. No primary election shall be held under the provisions of this act in a pace or building where intoxicating liquor is sold.

General election district not to be divided.

Place of holding election.

Designation of districts.

Not to be held where intoxicating liquors sold.

Neglect of Department of Elections or sheriff to deliver voting books.

SEC. 24. If the Sheriff of New Castle county or the members of the Department of Elections for the City of Wilmington shall wilfully neglect, refuse or fail to deliver to

each inspector of primary elections the "Voting Books of Qualified Voters for Primary Elections" or "Voting Books of Qualified Voters" in his or their custody, for each general election district that may be contained in the primary election district for which he is appointed, [or the Clerk of the Peace shall lawfully neglect, refuse or fail to deliver[1] to the Department of Elections for the City of Wilmington the said "Voting Books of Qualified Voters,"] then in that case the said Sheriff or any member of said Department of Elections. [or the Clerk of the Peace of New Castle county] so neglecting, failing or refusing shall, upon conviction therefor, be adjudged guilty of a misdemeanor and shall for every such offence be punished by imprisonment in the county jail for a period not exceeding one year, or by a fine of not more than two hundred dollars, or both, and such conviction shall of itself work a forfeiture of his office.

Amendment. Act of March 24, 1903, 22 D. L. 596.

Neglect of Clerk of the Peace.

Amendment. Act of March 24, 1903, 22 D. L. 596.

Misdemeanor.

Punishment.

Forfeiture of office.

SEC. 25. Whoever, during the time that any primary election is in progress in any primary election district in New Castle county or during the time the ballots cast thereat are being counted, shall bring, take, order or send into, or attempt to bring, take or send into any place of holding any primary election, any intoxicating liquors whatever, or shall at any such time and place drink or partake of any such intoxicating liquors, he or they shall, upon conviction therefor be adjudged guilty of a misdemeanor and shall for every such offence be punished by a fine of not less than five dollars, and not exceeding ten dollars.

Taking intoxicating liquors into place of election.

Drinking intoxicating liquor.

Misdemeanor.

Punishment.

SEC. 26. That the sheriff of New Castle county shall provide and deliver, or cause to be provided and delivered to the officers at every polling place in the county outside of the City of Wilmington (and the Department of Elections to perform the same duties in the City of Wilmington), where a primary election is to be held, a ballot box, the same to be provided with a lock and key; the said ballot box to be not less than twelve inches long, nine and one-half inches wide.

Ballot boxes to be provided.

Description.

1. For time of demand by the Department of Elections of said books see Sec. 18 of this Act, p. 352 of this volume.

and nine inches high; both sides of said box shall be entirely of clear glass and shall have a lid so constructed that the said lid will slide with ease. The lid of said ballot box shall have an opening in the top not more than one inch long and not more than three-sixteenths of an inch wide; the opening to be entirely enclosed with iron, steel or tin, which material shall be securely fastened to the lid. He shall also furnish to the officers holding any primary election a box of sufficient size to hold the ballots cast at such primary election.

Other box.

Ballot box where placed

Sec. 27. That part of the ballot box composed of glass shall be so placed during the time that any primary election is in progress that it can be seen at all times by the persons on the outside of the polling places. The lid of the ballot box shall be securely locked during the time that the primary election is being conducted, and shall not be unlocked until the polls are closed.

Locked during election.

Number of votes cast to be announced at close of election.

Sec. 28. That at the time for closing the polls at a primary election held under the provisions of this act, the presiding officer shall publicly proclaim in a clear and distinct voice the number of votes that have been cast at such primary election as shown by the poll books kept by the clerks.

Reading of ballots.

After closing the polls at a primary election, the presiding officer and judges shall openly and publicly remove the lid of the box containing the ballots. The ballots shall be taken separately from the box. One of the judges shall keep in his custody the said box while the other judge shall publicly in the presence of the watchers, hereinafter provided for, take the ballots one by one from the box and read the same. (a) When a ballot shall be read it shall be submitted to each of the other judges for inspection and put in the other box directly to be procured in Section twenty-four of this act, it being first seen that the said box is empty; two clerks at least shall keep an accurate account of the ballots as they are read, which shall be done on the tally sheets hereinafter provided to be furnished, by writing the name of every person voted for in the margin under a designation of the office for which the vote is given to him. The clerk shall make a distinct mark with a pen and ink in the row opposite such name for

Custody of same.

Clerks to keep tally.

every vote such person shall receive for the same office. At the close of the canvass of the ballots cast for each candidate, the inspector shall publicly announce the vote and the result (*b*) of the canvass.

Result of canvass to be announced when count completed.

(*a*) In the case below cited, the indictment charged that ballots cast for one person were read for another person.
State vs. Matlack, 5 Penn. 401 at 403-4-5-6. (yr. 1905)

(*b*) The indictment, in the case below cited, charged, that the officer "did not * * cause a true statement of the ballots * * taken * * to be made."
State vs. Matlack, 5 Penn. 401 at 403-4-5-6. (yr. 1905)

SEC. 29. After having counted the ballots cast at any primary election, the officers holding such election shall forthwith fill out and sign two tally sheets and two certificates, (*a*) hereinafter provided to be furnished, with the number of votes in words at length entered thereon that have been cast for each and every candidate at such primary election, and the exact time that said canvass was completed. One of said certificates, together with one of said tally sheets and one poll list, shall be delivered by the inspector outside of the City of Wilmington, on the first secular day following such primary election, to the chairman of the regularly organized and constituted County Committee or governing authority of the political party, organization or association holding such primary election. One of said certificates, together with one of said tally sheets and one poll list, shall be delivered by the inspectors in the City of Wilmington to the chairman of the regularly organized and constituted County Committee or governing authority of the political party, organization or association holding such primary election, within one hour from the time that the canvass of the votes has been completed. The said ballots, after having been counted, shall be deposited in the box furnished for that purpose, together with the other said certificates, tally sheets and poll lists. The lid of said box shall be secured by tape crossed and sealed in sealing wax by one of judges not being the inspector, and shall be delivered by the inspector on the first secular day following such primary election, to the Sheriff of New Castle county who shall make such disposition of the same as the regularly organized and constituted

Tally sheets and certificates to be prepared.

Disposition of same.

Disposition of ballots.

County Committee or governing authority of the political party, organization or association holding such primary election may direct. The regularly organized County Committee or governing authority of the political party, organization or association holding any primary election shall furnish at every polling place in the county where a primary election is to be held, blank tally sheets, blank certificates, blank poll books and stationery sufficient for the use of the officers holding such primary election. They shall also furnish to the primary election officers printed instructions of the parts of this act that in the judgment of the said committee is necessary for the proper performance of their duties.

Blank tally sheets, &c., by whom furnished.

Printed instructions to officers.

(*a*) In regard to the duties of election officers as to certificates, and particularly in regard to their having no power to alter the same, see
Knight & Kennedy vs. Ferris, 6 Houst. 283 at 328. (yr. 1881)
State ex rel Wright vs. Warren, 1 Houst. 39 at 44. (yr. 1855)
State vs. Clark, 2 Marv. 456. (yr. 1896) syllabus.
State vs. Brand, 2 Marv. 459 at 462. (yr. 1897)

Poll books.

Voting.

SEC. 30. The poll books used at any primary election hereafter held shall have every line therein numbered, commencing with the figure 1, and continuing serially. On offering to vote at a primary election the voter shall deliver to the presiding officer a single ballot containing the name or names of the person or persons for whom he desires to vote. He shall announce his name and residence, and, if he is qualified as heretofore provided, his vote shall be received and deposited in the ballot-box having the glass sides, and his name and residence entered on the poll book on the line directly opposite the first unoccupied number in order that the election officers may, at any time during the progress of the primary election know the exact number of votes that have been cast. The election officers of such primary election shall at any time announce to any person who is in the act of voting and so inquiring, the number of votes that have been cast up to that time.

When requested number of votes cast must be announced.

Rope or chain to be furnished each voting place.

SEC. 31. The Sheriff of New Castle county shall furnish at every polling place where a primary election is held, outside of the City of Wilmington, and the Department of Elec-

tions to perform the same duty in the City of Wilmington, two pieces of rope or chain. The officers holding such primary election shall place the said rope or chain at a distance not less than six feet on either side of the window or door where a primary election is held; the said rope or chain shall be at least twelve feet in length, and shall be at least twenty-four inches from the ground and shall so remain during the time such primary election is in progress. No person shall be permitted to be on the inside of said rope or chain excepting to cast his ballot, after which he shall immediately retire. Any person violating the provisions of this Section shall, upon conviction therefor, be adjudged guilty of a misdemeanor, and shall for every such offense be punished by a fine of ten dollars.

How used.

No one permitted within enclosure except to vote.

Violation.

Punishment.

SEC. 32. That each candidate for nomination at any primary election hereafter held shall have the right to appoint one qualified elector as watcher, who shall be entitled to be in the room where such primary election is held, from the commencement to the close of such primary election and signing of the certificates thereof. If any person appointed watcher shall so conduct himself as to interfere with the progress of any primary election he may, upon complaint made by the primary election officers to the chairman of the regularly organized and constituted County Committee or governing authority of the political party, organization or association holding such primary election, or to any member thereof from the hundred wherein such interference occurs at the direction of the said chairman or member aforesaid, be removed from the room where such primary election is being held, and the candidate whose representative the watcher so removed was shall be without representation during the continuance of said primary election. If any person shall exclude or attempt to exclude any elector, except in the manner hereinbefore provided, who has been appointed watcher, from the room where any primary election is being held, he shall, upon conviction therefor, be adjudged guilty of a misdemeanor, and shall for every such offence be punished by a fine of one hundred dollars, or by imprisonment

Watchers.

Removal for misconduct.

Attempt to exclude watcher misdemeanor.

Punishment.

in the county jail for a period not exceeding ninety days, or both.

Challenge to vote.

Decision.

May require oath of voter.

Form.

After oath vote to be received.

Decision on challenged vote not to delay other votes.

Challenging vote for delay misdemeanor.

SEC. 33. That any recognized member of the political party, organization or association in whose interest any primary election is held, may challenge the right of any person offering to vote at such primary election; and the board of election officers holding the same shall determine whether the person so offering is entitled to vote, and shall receive or reject such vote, as the evidence for or against the right of the person to vote shall warrant. The officers may, of their own motion, or in case of challenge if there be doubt of the propriety of receiving the offered vote, require of the person so offering to vote, his oath or affirmation, which shall be administered by the presiding officer, who is hereby authorized to administer the same in the following form, viz: Do you solemnly swear (or affirm) that you are a legally qualified voter under the rules of the ..... party authorizing this primary election; that you will be legally qualified to vote at the following election for which candidates are now being selected to be voted for; that you are at this time a bona fide resident of this primary election district; that you have not voted, or you will not vote at any other voting place this day; that you have not voted or you will not vote at the primary election of any other political party, organization or association held for the purpose of nominating or selecting candidates to be voted for at the ensuing election, so help you God (or so you solemnly affirm.) After the voter has taken the said oath or affirmation, the ballot of such voter shall be received and deposited in the ballot box; and if any person offering to vote at any primary election decline to make the oath or affirmation demanded, his vote shall be rejected. If at the time a person proposes to vote he is challenged and there are several persons waiting their turn to vote, said challenged person shall stand to one side until unchallenged voters have had an opportunity to vote, when his case shall be taken up and disposed of; Provided, that if any person shall challenge a qualified voter, resident of such primary election district, well known as a member of the po-

litical party, organization or association holding such primary election, for the purpose of annoying or delaying voters he shall, upon conviction therefor, be adjudged guilty of a misdemeanor, and shall for each and every such offence be punished by fine of one hundred dollars, or by imprisonment in the county jail for a period not exceeding six months, or both. Punishment.

Powers of election officers.

SEC. 34. That each of the officers of any primary election hereafter held is clothed with the powers and duties of a county constable, and is required to see that good order is preserved at such election, and may arrest and present for commitment to any justice of the peace any and all persons guilty of any unlawful conduct.

Compensation of election officers.

SEC. 35. The compensation of the officers and clerk of holding primary elections under the provisions of this act shall be two dollars and fifty cents for each judge and clerk and three dollars for each inspector at each primary election so held. The expenses for holding primary elections under the provisions of this act including stationery, pay of officers and clerks, shall be paid by the Levy Court of the county wherein such primary election is held to nominate persons to be voted for at a subsequent general election and by the Mayor and Council of Wilmington in any year when a primary election is held in the City of Wilmington to nominate officers to be voted for at the subsequent municipal election in the said city. How paid.

Election officer acting unlawfully may be removed.

SEC. 36. If any person appointed to hold a primary election shall conduct such election in violation of any of the provisions of this act, the regularly organized and constituted County Committee or governing authority of the political party, organization or association holding such primary election is hereby empowered and directed to remove such officer or officers and substitute others in their stead, and the person so substituted shall take the oath or affirmation prescribed by Section five of this act, which said oath or affirmation shall be administered by any qualified inspec- Substitutes.

tor or judge who is hereby authorized to administer the same.

Who declared nominated.

SEC. 37. In all cases the candidate receiving the highest number of votes shall be declared the nominee of the political party, organization or association holding such primary election. In case of death, resignation or removal of any candidate subsequent to a nomination the political party, organization or association in which such vacancy exists, shall provide the manner in which such vacancy shall be filled.

Vacancy.

Nominee how ascertained.

SEC. 38. The regularly organized and constituted County Committee or governing authority of the political party, organization or association holding any primary election is hereby empowered to calculate the aggregate number of all the votes that shall have been cast, in all the hundreds of the county or any subdivision thereof, for every person voted for for any one office at such primary election, and to declare the candidate or candidates in cases where candidates for more than one office are to be nominated, receiving the highest number of votes the nominee or nominees of such political party, organization or association for the office for which he was voted for at such primary election. In all cases of a tie vote or of contests, the regularly organized and constituted County Committee or governing authority of the political party, organization or association holding at such primary election shall have the power to hear and determine such contests, and to decide who shall be entitled to the nomination. The proceedings in such cases shall be in such form and manner as the said committee or governing authority shall determine upon. Before entering upon the discharge of the duties set forth in this section the members of the committee or governing authority aforesaid, shall be sworn by a notary public to faithfully and honestly discharge the duties herein imposed and the failure upon the part of any member of the said committee or governing authority to discharge such duties faithfully and honestly shall be deemed a misdemeanor, and the person so offending shall, upon conviction therefor, be fined not less than one hundred

Tie votes or contests.

How decided.

Form of proceedings.

dollars nor more than five hundred dollars, and be imprisoned in the county jail for a period of not less than sixty days nor more than one year.

Printing of ballots.

SEC. 39. That the ballots used at any primary election hereafter held shall be printed by the regularly organized and constituted County Committee or governing authority of the political party, organization or association holding such primary election. The names of all candidates for nomination for the same office shall be placed under the title of said office, the surname of candidates to be placed in alphabetical order and shall not be separate one from another by any other matter. Where there are several candidates for the nomination for the same office, the elector shall indicate his choice by crossing out the name of all the candidates except those for whom he desires to vote, and in case an elector has omitted to cross out the names on his ballot as aforesaid, the said ballot shall not be counted for any such candidate or candidates. Any person desiring to be voted for as a candidate for nomination at any primary election hereafter to be held shall notify the regularly organized and constituted County Committee or governing authority of the political party, organization or association of which he is a member in writing of such desire at least ten days before such primary election is to be held. The said ballots shall be printed and ready for distribution at least five days before the day of such primary election.

Form of ballot.

How voted.

Person desiring to be voted for must notify authorities.

Ballots printed when.

Act not applicable to election of delegates to National Convention.

Amendment. Act March 26, 1903, 22 D. L. 597.

[1]SEC. 40. That the provisions of this act shall not apply to any primary election held for the election of delegates to any State convention called for the purpose of electing delegates or representatives to any national [or State] political convention; Provided, however, that the regularly organized County Committee or governing authority of the political party, organization or association by or for which the primary election is held for the election of delegates to any State convention held for the election of delegates to any national [or State] political convention, shall bear the ex-

Amendment. Act March 26, 1903, 22 D. L. 597.

1. Amended. See Chapter 286, Volume 22.

Such election to be at expense of party.

Also election of delegates to other conventions.

Amendment, Act March 26, 1903, 22 D. L. 597.

pense for conducting such primary election as set forth in this Section. And, provided further, that the said governing authority ordering or issuing the call for a primary election to elect delegates or representatives to any * * * county or city convention, shall bear all the expense incurred by reason of such election.

Act applicable to N. C. Co. only.

Sale of intoxicating liquors not prohibited on day of primary election.

SEC. 41. That this act shall apply solely to New Castle county, and the laws now in force prohibiting the sale of intoxicating liquors on the day of any general, special or municipal election are hereby excepted, and shall not apply to any election contemplated by this act.

Passed at Dover, May 27, 1897.

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19 D. L. 85.

AN ACT to provide for the Secrecy and Purity of the Ballot.

Duty of inspector to provide a room for holding elections.

Place of holding elections.

Notice of change of place of holding elections.

Plan of room and entrance.

SECTION 1. That hereafter it shall be the duty of each inspector of elections in this State, outside of the City of Wilmington, to provide a room for the holding of any general or special election (*a*) in his hundred or election district which shall be adapted to the requirements of this Act. Said room shall be at the place now or which may hereafter be established by law in each hundred or election district for the holding of elections, or in as close proximity thereto as practicable, having due regard to the convenience of the voters;[1] *provided, however*, that if any inspector shall select a place for the holding of any general or special election in his hundred or election district other than the one established by law, he shall do it in time to give the notice of holding such election required by law. Said room shall have a door or entrance of easy or convenient access, and if practicable a separate means of exit. It shall be provided on the outside with a passage at least four feet wide and with a railing, rope or wire on each side commencing at least thirty feet away from and leading to the entrance to such place of election and passing the place assigned

1. See Act June 1, 1898, 21 D. L. at 109, Sec. 2; see also p. 114, Sec. 8 of the same Act.

for the challengers and thence to the entrance of the room in which the election is held.

(*a*) This is the uniform ballot law, under which all elections are held all over the State, principally the election held on the Tuesday next after the first Monday in the month of November as provided for by the Constitution. The Court referred to it, and the meaning of an election, as follows:

Lore, C. J.: "The election of November 3rd * was held under the provisions of the Constitution naming the day and prescribing the mode by ballot. Art. 4, Sec. 1. * * The Constitution of this State provides for the election of Governor, Senators, and other officers named, and prescribes for the purity and freedom of the elections; and the bill of rights provides that all elections shall be free and equal. * * Under our form of government, therefore, an election is the Constitutional expression of the sovereign will of the people, as to who shall be their accredited agents to execute the laws, and to preserve their rights and liberties."

State vs. McCoy et al, 2 Marv. 576 at 587. (yr. 1897)

Interior appliances of room.

The inspector shall provide for the room a railing therein separating the part of the room to be occupied by the election officers from the remainder of the room. He shall also provide a suitable table and chairs for the use of the election officers. The table shall occupy such a position in said room as to enable the election officers and the challengers hereinafter provided for to easily communicate with each other. He shall cause to be constructed in the room at least one booth for every one hundred and fifty voters or fractional part thereof in each hundred or election district; *provided*, that there shall not be less than three booths at any one hundred or election district. The booths shall be at least three feet square and six feet high if ceiling will admit it. They shall each contain a shelf properly constructed * * * * * *[1] and they shall be so constructed and arranged that all the election officers in the room can see whether more than one voter enters any one of them at any one time. In the City of Wilmington it shall be the duty of the Department of Elections to select the voting place[2] in each election district within the city and to provide the room in which the election is to be held and to protect the same with the required railing or rope and to construct there-

Booths.

Size and arrangement of booths.

Repealed. Act March 2, 1901, 22 D. L. 107, Sec. 2.

Duty of the Department of Elections in the City of Wilmington, to provide conveniences for elections.

1. Instead of pen and ink, which the above section provided for, it is now "an indelible black lead pencil, or indelible back crayon." Act March 2, 1901, 22 D. L. p. 107. (p. 395 of this volume.)

2. See the two Acts of June 1, 1898, 21 D. L. pp. 94 and 146. (p. 337 of this volume.)

in the necessary number of booths, and to do all other things required to be done by the inspectors of election outside of the City of Wilmington in and about the furnishing and fitting up of said room.[1]

Challengers.

SEC. 2.[2] Each of the political parties may select and accredit some suitable person as a challenger to stand without the door or entrance of the room in which the election is to be held, and by the side of the passage hereinbefore provided for; and in case of failure of any or all of the political parties to select such person or persons as challenger or challengers it shall be the duty of the inspector and judges to make such selection or selections; *provided,* that the challengers may be changed and their places filled in like manner during the day.[3]

What shall constitute a political party under this Act.

SEC. 3. A political party within the meaning of this Act shall be an organization of bona fide citizens and voters of any county in this State, which shall by means of a convention, primary election or otherwise, nominate candidates for public offices to be filled by the people at any general or special election within the State. No organization shall be regarded as a political party that does not represent at least one hundred bona fide citizens and voters of the county in which it exists. If the Clerk of the Peace should have any doubt as to the sufficiency of the number of bona fide voters represented by any organization in any county, he may demand a certificate of twenty-five voters belonging to such an organization as to that fact.

Clerk of the Peace may demand certificate of organization.

Clerks of the Peace to print ballots.

SEC. 4. The Clerks of the Peace for the several counties shall cause to be printed on the ballots herein provided for, the

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1. For the time of opening the polls, see Act March 20, 1905, 23 D. L. p. 91; and for time of closing election, see Act June 1, 1898, 21 D. L. p. 120, Sec. 20.

2. See Sec. 17 of this Act, p. 379.

3. See Act May 13, 1891, 19 D. L. p. 145, Sec. 14, (p. 284 this volume) where it states the challenger shall stand inside the window. And Act May 20, 1897, 20 D. L. p. 404, Sec. 3, (p. 388 this volume), as to challengers, which provides that the challengers shall act as Clerks of Election in the City of Wilmington.

The Judges now name the clerks. The Act authorizing the Judges to name the clerks is the Act of June 1, 1898, 21 D. L. p. 116, Sec. 13.

names of the candidates nominated by the parties recognized by them as political parties within the meaning of this Act. The nomination of the candidates for the office of Governor, Representatives in Congress and Presidential Electors shall be certified to the several Clerks of the Peace by the presiding officer and secretary of the several State party conventions or committees, and the nominations of the candidates for the county, hundred and district offices shall be certified to the respective Clerks of the Peace of the county in and for which such nominations have been made by the presiding officer and secretary of the proper party convention or committee. The certificate shall be in writing and shall contain the name of each person nominated, his residence and the office for which he is nominated. The persons making such certificate shall add to their signatures their respective places of residence and shall acknowledge said certificate before an officer duly authorized to take acknowledgments of deeds, and a certificate of such acknowledgment shall be affixed to the instrument.

Nomination to be certified to Clerk of the Peace.

Form of certificate.

The certificate shall also designate a title for the party which such convention or committee represents, together with any simple figure or device by which its list of candidates may be designated on the ballot; *provided*, that the figure or title or device selected and designated by the State convention or committee of any party shall be used by that party throughout the State. Only one figure or device shall be used by a party at any election. The same title, figure or device shall not be used by more than one party, and the party first certifying a name, title, figure or device to the Clerks of the Peace shall have the prior right to use the same. Such figure or device may be the figure of a star, an eagle, a plow, or some such appropriate symbol, but the coat of arms or seal of the State, or of the United States, or the flag of the United States, shall not be used as such figure or device.

Certificate to designate figure or device of party.

Figures or devices of parties.

What figures or devices may be used.

What shall not be used.

In case of death, resignation or removal of any candidate[1] subsequent to nomination a supplemental certificate of nomi-

Death, resignation or removal of candidates.

1. See Sec. 9 of this Act, p. 374. In case of death while in office, see Art. 111, Sec. 9 of the Constitution.

In case of division and factions in parties, who shall use party figure or device.

nation may be filed by the proper officers of the State, county, district or hundred committees. In case of a division in any party and claim by two or more factions to the same party name or title, figure or device, if the division occurs at a State convention, or extends throughout the State, the Clerks of the Peace of the several counties shall, within ten days after any one of them has received the certificates of the contending factions, assemble in the office of the Clerk of the Peace at Dover and determine which faction the name, title or figure properly belongs to, giving the preference to the convention held at the time and place designated in the call of the regularly constituted party authorities; and if within five days[1] thereafter the other faction shall present no other party name or title, figure or device and certify the same to the Clerks of the Peace the latter shall again immediately assemble and select some suitable title, figure or device for said faction and the same shall be placed above the list of their candidates on the ballots. If the certificate of the contending factions shall not be received by the Clerks of the Peace in time for them to assemble at Dover before publishing the device and list of candidates in the newspapers, then and in that case, each Clerk of the Peace shall determine for himself which faction shall be entitled to the name, title, figure or device and shall select a name, title, figure or device for the other faction. *Provided*, that in case of division in any party extending only throughout a county, district or hundred, the Clerk of the Peace of the county in which such division occurs, upon the receipt of certificates from the contending factions shall determine which faction is entitled to the party name, figure or device and to have their nominations printed in the proper party column, and should the other faction fail to do so the Clerk of the Peace shall select for them a name or title, figure or device.

How decided

Clerk of the Peace to preserve all certificates of nominations.

SEC. 5. The Clerks of the Peace of the several counties shall cause to be preserved in their respective offices all certifi-

1. The Clerk of the Peace for outside of Wilmington publishes in newspapers the ballots 10 days before the day of election. See Sec. 7 of this Act, p. 373.

The Department of Elections performs the same act for the City of Wilmington. See Act April 6, 1893, 19 D. L. at p. 986, Sec. 8; and see also Sec. 10 of the same Act, pp. 401-402 of this volume.

cates of nominations filed under the provisions of this Act for six months after the date of the filing thereof.

Time of filing certificates of nominations.

SEC. 6. Certificates of nominations herein directed to be filed with the Clerks of the Peace shall be filed not less than twenty days before the day fixed by law for the election of the persons in nomination.[1]

Publication of nominations.

SEC. 7. At least ten days before an election to fill any public office the Clerk of the Peace of each county shall cause to be published in at least two newspapers within his county the nominations to office certified to him as directed in Section 4.[2] He shall make no less than two publications in each of such newspapers before election. Such publications shall be made in two newspapers representing the two principal political parties. *Provided*, that in all cities where a daily newspaper is published such notice shall also be published in two daily papers representing such political parties, if such there be. The lists of nominations published by the Clerk of the Peace shall be arranged as far as practicable in the order and form in which they will be printed upon the ballots and shall designate the devices under which the lists of candidates of each party will be printed. The Clerk of the Peace shall not include in the publication to be made according to this section the name of any candidate whose certificate of nomination shall have been filed in his office who shall have notified him in writing duly signed and acknowledged that he will not accept the nomination. The names of such candidates shall not be included in the names of the candidates to be printed on the ballot as hereinafter provided.

In what newspapers published.

Arrangement of nominations

What nominations shall be excluded from publication and from the ballots.

Clerks of the Peace to print ballots.

SEC. 8. The Clerk of the Peace in each county shall cause the names of all candidates to be voted for in his county and the several hundreds or districts in the same to be printed in parallel columns on one ballot, all nominations of any party being placed under the title and device of such party as desig-

1. As to municipal elections see Act April 6, 1893, 19 D. L. at p. 988. Sec. 10, par. 5, which provides it shall be 10 days before election. (p. 402 of this volume.)

2. As to notice of time and place of holding election, see Act June 1, 1898, 21 D. L. p. 114, Sec. 8.

nated by its authorized agent or agents in the certificate or certificates; or if none be designated, under some suitable title and device to be selected by the Clerk of the Peace. The ballots shall be of uniform size and of the same quality and color of paper and sufficiently thick that the printing cannot be distinguished from the back. The arrangement of the ballot shall in general conform as nearly as possible to the plan hereinafter given and the device named and chosen and the list of candidates of the Democratic party shall be placed in the first column on the left hand side of said ballot; of the Republican party in the second column, and of any other party in such order as the Clerk of the Peace shall decide.[1]

Size, form, style and color of ballots.

Arrangement of ballots.

Act May 20, 1897, 20 D.L. 403, Sec. 2.

DEVICE	DEVICE
DEMOCRATIC	REPUBLICAN
TICKET.	TICKET.
For Governor:	For Governor:
A. B.	E. F.
For Representative	For Representative
in Congress:	in Congress:
C. D.	G. H.

Death, removal or resignation of candidates after printing of ballots.

SEC. 9. In case of the death, removal or resignation of any candidate after the printing of such ballots and before such election,[2] it shall be lawful for the chairman of the State, county, hundred or district political organization by which such candidate was nominated, to make a nomination to fill such vacancy, and to provide the election officers of each election district in which such candidate is to be voted for with a number of pasters containing only the name of such candidate at least equal to the number of ballots provided for each election district, but no pasters shall be given to or received by any one except such election officers and such chairman, and it

New nomination, pasters, etc.

1. Clerk of the Peace also to fold ballots, so the face thereof will not show. See Act May 20, 1897, 20 D. L. p. 405, Sec. 8, p. 391, Sec. 8 of this volume.

2. See Sec. 4, par. 3 of this Act, and seeAct April 6, 1893, p. 990, Sec. 17 as to a similar provision in the municipal election law of the City of Wilmington, p. 406 of this volume.

shall be the duty of the clerks of election to put one of such pasters in a careful and proper manner and in the proper place in each ballot before they shall sign their initials thereon. Duty of clerks of election in using such pasters.

SEC. 10. If the printer of such ballots or any person employed in printing the same shall give or deliver or knowingly permit to be taken any of said ballots by any person other than the Clerk of the Peace for whom such ballots are being printed, or shall print, or cause or permit to be printed any ballot in any other form than the one prescribed by this Act or with any other names thereon than those authorized by the Clerk of the Peace or with the names spelled or the names or devices thereon arranged in any other way than that authorized and directed by the said Clerk of the Peace, he shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than one nor more than five years or both at the discretion of the court.[1] Printer of ballots to allow no ballots to be taken out, nor to print in any other form. Penalty.

SEC. 11. The Clerk of the Peace in each county shall cause to be printed within the State of Delaware in the form hereinbefore provided four ballots for every voter in each hundred or election district in his county, and the number of voters shall be ascertained in each hundred or election district by reference to the highest number of votes polled therein at any preceding election with due allowance for any estimated increase thereof. If a new election district has been established in his county the number shall be estimated by said Clerk of the Peace according to the best information he can obtain. Number of ballots to be printed. Number of voters, how ascertained.

The Clerk of the Peace shall cause the ballots for each hundred or election district to be carefully wrapped and tied in two packages each containing the same number of ballots, Packages of ballots.

1. For a similar provision in the municipal election law of the City of Wilmington see Act April 6, 1893, 19 D. L. p. 990, Sec. 17. (p. 406 of this volume.)

Lead pencil or crayon. Repealed, Act March 2, 1901, 22 D. L. 108, Sec. 3.

which packages shall be plainly marked and securely sealed with wax.[1] *[2]

Duty of inspectors of election to appear at the office of the Clerk of the Peace to receive ballots on day before election.

Repealed, 22 D. L. 108, Sec. 3.

To keep safe.

SEC. 12. It shall be the duty of each inspector of election outside of the City of Wilmington to appear at the office of the Clerk of the Peace of his county on the day preceding the election before the hour of three o'clock in the afternoon, and the Clerk of the Peace shall deliver to him one of the sealed packages of ballots* * * for his hundred or election district, and the said inspector shall safely keep the said package and produce the same at the place of election and at the time of the opening of the election, *provided, however,* that in case there shall be a vacancy in the office of any inspector on the day preceding the election, or any inspector for any cause shall not apply to the proper Clerk of the Peace for the package of tickets printed for his hundred or election district by the hour of three o'clock in the afternoon of the day preceding the election, the said Clerk of the Peace shall deliver said package to some trusty person, who shall deliver it on the day of the election to the inspector of election of such hundred or election district at the place of election and immediately upon the qualification of the election officers.

Failure of the inspector to call for tickets, Clerk of the Peace to deliver to whom.

To whom tickets delivered in the City of Wilmington.

In the City of Wilmington it shall be the duty of the President of the Department of Elections, or in case he cannot attend some other member of the Department of Elections authorized in writing by the President of the Department of Elections to appear at the office of the Clerk of the Peace of New Castle County on the day preceding each election, on or before the hour of three o'clock in the afternoon, and the said Clerk of the Peace shall deliver to him one of the sealed packages * * * * for each election district in the City of Wilmington. And the said Department of Elections shall

Repealed, 22 D. L. 108, Sec. 3.

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1. The Clerk of the Peace shall also fold the ballots. Act May 20, 1897, 20 D. L. p. 405, Sec. 8, p. 391, Sec. 8 this volume.

2. The Clerk of the Peace now supplies one dozen indelible black lead pencils or indelible black crayons for each election district (instead of stamps as heretofore). Act March 2, 1901, 22 D. L. p. 108, Sec. 3, p. 395 this volume.

safely keep the same and deliver to each board of election officers at the polling place on the day of the election, at the time provided by law for the delivery of the ballot boxes,[1] the ballots intended for their several and respective districts.

Penalty of election officer or other person breaking package containing ballots, before opening of election. Repealed. 22 D. L. 107, Sec. 3.

SEC. 13. Any inspector or any other election officer or any other person whatever who shall break any package containing ballots * * * *[2] or take any ballot therefrom or suffer the same to be done by another, before the opening of the election, shall be deemed guilty of a misdemeanor and upon conviction thereof by indictment shall be fined not less than three hundred dollars nor more than five hundred dollars, and may at the discretion of the court be imprisoned for a term not less than one year nor more than two years.

Loss or destruction of ballots.

SEC. 14. If by accident or casualty the ballots delivered to any inspector or other person by any Clerk of the Peace shall be lost or destroyed, it shall be the duty of such person having such packages in his custody to report the loss at once to the Clerk of the Peace from whom the same were obtained and make affidavit of the circumstances of the loss, whereupon such Clerk of the Peace shall at once re-supply such person. In case such person having in custody said package fails or refuses to report and make proof of the loss, any qualified elector may do so, and thereupon such Clerk of the Peace shall at once send a new supply by some trusty person as provided in other cases. In case, for any reason, there should be found no ballots or other necessary means or contrivances for voting, at the opening of the election, it shall be the duty of the election officers at such election place to secure the same as speedily as possible, and, if necessary, such election officers shall have ballots printed or written; *provided, however,* that such ballots shall conform as nearly as possible to the official ballots, and the printing and the preparation and the care of the same

New supply of ballots.

In case of election officers find no ballots or means of voting at election.

Proviso.

1. The ballot boxes are delivered a week or ten days before election. The ballots the day preceding the election. See Act June 1, 1898, 21 D. L. p. 109, Sec. 3; and see Sec. 8 of Act of April 6, 1893, 19 D. L. p. 986 as to municipal elections. (p. 401 of this volume.) See also Act May 15, 1891, 19 D. L. p. 91, Sec. 12, p. 376.

2. Indelible black lead pencils or indelible black crayons. See Act March 2, 1901, 22 D. L. p. 108. (pp. 394-395 of this volume.)

shall be under the same provisions and penalties as the printing and the care of the other ballots prescribed in this Act.

Opening of package of ballots.

SEC. 15. At the opening of the election, after the qualification of the several officers, and in the presence of the others, the inspector or the chairman of the board of inspectors shall open the package of ballots in such a manner as to preserve the seals intact. He shall then deliver to the clerk of the election of the opposite political party from his own, twenty-five of the

Repealed, 22 D. L. 107. Sec. 3.

ballots * * * * * * * * * * * * * * * *[1]

Duty of clerk of election.

The clerks of the election shall at once proceed to write their initials, in ink, on the * * * * * * back of each of the said ballots,[2] in their ordinary handwriting, and without any distinguishing mark of any kind. As each successive elector calls for a ballot the clerk of the election having the custody of the ballots shall deliver to him the first signed of the twenty-five ballots, and the inspector shall immediately deliver to the said clerk of the election another ballot which the clerks of the election shall at once countersign, as before, and add to the ballots already countersigned, so that it shall be delivered for voting after all of those theretofore countersigned.

Delivery of ballots.

Instructions for voting.

SEC. 16. The Clerk of the Peace of each county shall cause to be printed in large type on cards, in English and such other language as he may deem necessary, instructions for the guidance of electors in preparing their ballots. He shall furnish twelve of such cards in each of the languages determined upon by him to each of the election inspectors at the same time he delivers to him the ballots for his hundred or election district. Each inspector shall cause to be posted one of each of said cards in each place or compartment provided for the preparation of ballots, and one of each kind of such cards at or near to the outer end of the enclosure leading to the polling place, and not nearer than thirty feet of the polling place, and not less than three of each of such cards, and three samples of

Inspectors to have cards posted.

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1. Same as not 2, p. 377.

2. The clerks now write the initials "in ink across the back of the ballot as folded, and near the middle thereof." Act May 20, 1897, 20 D. L. at p. 406, Sec. 9. (p. 391, Sec. 9 of this volume.)

each of the ballots in and about the polling place at the opening of the polls on the day of election, which sample ballots shall be printed on different colored paper than the genuine ballots. Said cards shall contain full instructions to the voters as to what must be done: First, to obtain ballots for voting; second, to prepare the ballots for voting; third, to obtain a new ballot in place of one accidentally defaced, mutilated or spoiled, also copies of Sections 24, 32, 33, 34 and 35 of this Act. Form of cards of instruction.

SEC. 17. One challenger appointed and designated by each political party as hereinbefore provided shall be entitled to stand at the side of the passage and near the entrance to the room.[1] No other person shall remain within thirty feet of said entrance except for the purpose of offering his vote, and voters shall approach and enter the passage in the order in which they appear for the purpose of voting. If any person offering to vote shall be challenged by one of such challengers or by any one of the election officers, his right to vote shall be at once determined by the proper officers[2] and if his vote is refused he shall immediately stand aside and give place to the person next in line, and retire without delay from within the thirty feet space around the entrance to the room. Challengers, where to stand. No other persons, except to vote, to be within 30 feet of entrance. Challengers.

SEC. 18.[3] * * * * * * * * * * Repealed. Act May 20, 1897, 20 D. L. 403, Sec. 1.

* * * * * * * * * * * *

SEC. 19. When a voter shall have been passed by the challengers he shall be admitted to the election room.[4] *pro-* Admission of voter to election room.

1. See notes to Sec. 2 of this Act.

2. If a person's name be found in the Book of Registered Voters, he shall be permitted to vote unless a majority of the election officers decide he is not the person whose name appears on the book; or that he has become disqualified since he registered. If the objection or challenge is on the charge of bribery, he is sworn, and his oath is conclusive. Act June 1, 1898, 21 D. L. p. 119, Sec. 19. See also Secs. 23 and 50, Act of May 13, 1891, 19 D. L. at pp 148 and 157. (pp. 287 and 300 of this volume.)

3. The Act of May 20, 1897, 20 D. L. p. 403, Sec. 1, repealed the office of Voters Assistant, and the Act of March 8, 1901, 22 D. L. p. 109, re-enacted it. See pp. 387 and 396 of this volume.

(The above section referred to Voters' Assistant; but it is not applicable. The law of 1901 applies.) p. 396 of this volume.

4. The clerks, now, are the challengers, and they are in the election room. See note 3 to Sec. 2 of this Act. (The question of challengers is one of doubt.)

Number of voters admitted to election room.

Ballot and lead pencil by whom delivered. Repealed, 22 D. L. 108, Sec. 4; 20 D. L. 404, Sec. 1.

Duties of voter.

Preparing ballot. Repealed, Act May 20, 1897, 20 D. L. 403 Sec. 2.

Ballots, how folded.

Repealed, Act March 2, 1901, 22 D. L. 108, Sec. 4.

How deposited.

Duty of clerks.

Proviso.

What ballots shall not be deposited.

vided, however, that there shall not be in the room at any one time more than one voter for each booth therein. On entering the room the voter shall announce his name to the clerks of election who shall register it. The clerk holding the ballots shall deliver to him one ballot, and the other clerk shall deliver to him a [1]* * * * * [2]* * * * if deemed necessary, by unanimous consent of the election officers an interpreter may be called. The voter shall then, and without leaving the room, go alone into any of the booths which may be unoccupied and indicate the candidates for whom he desires to vote [in the manner following.[3] * * * * * * * * * * * *] Before leaving the booth or compartment the voter shall fold his ballot so that no part of the face thereof shall be exposed, and so that the initials of the clerks of the election shall be exposed and on leaving the booth or compartment shall return the * * *[4] to the clerk of the election and deliver the ballot to the inspector or to the judge who may temporarily be authorized to act for the inspector, who shall forthwith in the presence of the voter and of the other election officers deposit the same in the ballot box; and the clerks of the election shall write the word "voted" (*a*)[5] after the name of the voter on the poll list; *provided, however,* that if any elector shall show (*b*) his ballot, or any part thereof to any other person after the same shall have been marked, so as to disclose any of the candidates voted for, such ballot shall not be deposited in the ballot

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1. The clerk now delivers an indelible black lead pencil or an indelible black crayon instead of a stamp. Act March 2, 1901, 22 D. L. p. 108, Sec. 4, p. 395 this volume.

2. Act May 20, 1897, 20 D. L. p. 403, Sec. 1 abolished office of Voters' Assistant, p. 387 this volume. Act March 8, 1901, 22 D. L. p. 109, re-enacted it. P. 396 this volume.

3. The method of voting is set out in the Act of May 20, 1897, 20 D. L. p. 403, Sec. 2, p. 387 this volume, and the Act of March 2, 1901, 22 D. L. p. 107, Sec. 2, paragraph 2, p. 394 this volume.

4. The voter before he leaves the booth must return the lead pencil or crayon. Act March 2 1901, 22 D. L. 108, Sec. 4. (It used to be the stamp.) (p. 395 of this volume.)

5. The name of the voter is called out, and it is entered on the list of polls, and the word "voted" is written opposite the name in the "Book of Registered Voters." Act June 1, 1898, 21 D. L. p. 118, Sec. 18.

box. A minute of such occurrence shall be made on the poll list and such person shall not be allowed to vote thereafter. The voter shall immediately after voting leave the room and upon his refusal to do so may be ejected therefrom, but no voter to whom a ballot * * * or either, have been delivered shall be permitted to leave the room without voting the ballot or returning[1] it to the clerk of the election, * * * * * * * from whom he received it. Any voter who shall attempt to leave the room with the ballot * * * in his possession shall be at once arrested on demand of an election officer.[2]

Repealed. 22 D. L. 108, Sec. 4.

No voter to leave the room with ballot.

Repealed. 22 D. L. 108, Sec. 4.

To be arrested.

(*a*) The notes to this section indicate the changes in the method of voting. This section shows, step by step, however, what the voter must do in voting, and unless he comply, &c., he cannot vote, for voting is not a "right" but a "privilege." Prior to 1897 he used to have to pay a tax, then a dollar registration fee; now he simply gets registered.

Comegys, C. J.: "There is no natural right to vote. (59) * * "Pay your tax and you may vote." (65) The whole idea of our original government—that before 1776—was that only those who paid taxes should vote; not that all should vote, but only those who helped to support the government. It was a privilege conferred upon such, and such only."

Frieszleben vs. Shallcross et al, 9 Houst. 1 at 59-60. (yr. 1890)

(*b*) This provision does not allow a voter to *show* his ballot. In the case below cited a person was asked *how he voted*. Upon objection being made, the Court said:

Lore, C. J.: "We think that the provision for secrecy attending the voting gives the voter the privilege of disclosing how he voted or not, as he wishes. There is nothing to prevent his disclosing how he voted if he sees proper to do so. We think the testimony is perfectly competent to prove how he voted."

State vs. Matlack, 5 Penn. 401 at 417. (yr. 1905)

SEC. 20. Not more than one person shall be permitted to occupy any booth at one time; and no person shall remain in or occupy a booth longer than may be necessary to prepare his ballot, and in no event longer than three minutes. No more than one person for each booth in the room other than the election officers shall be permitted to enter or be in the election room at any one time, and no voter or person

Number of persons in room at one time.

Time for voting.

1. See Sec. 24 of this Act, p. 382.

2. As to references to stamps, and for penalty for carrying away lead pencil or crayon, see Act March 2, 1901, 22 D. L. p. 108, Secs. 2, 3 and 4. (pp. 394-395 of this volume.)

Conversation.

offering to vote shall hold any conversation or communicate with any other person than an election officer while in the election room.

Defaced or mutilated ballots.

SEC. 21. Any person who shall by accident or mistake spoil, deface or mutilate his ballot may, on returning the same to the clerks of the election and satisfying them that such spoiling, defacing or mutilation was not intentional, receive another in place thereof, and such clerk shall make a minute of the facts on the poll lists at the time, and the mutilated ballot shall then be destroyed by the elector in the presence of the election officers.

Repealed, Act May 20, 1897, 20 D. L. 403, Sec. 1.

SEC. 22.[1] *

What ballots not deposited.

SEC. 23. No inspector of election, or judge acting for the inspector, shall deposit any ballot upon which the initials of the clerks of the election as hereinbefore provided for does not appear or any ballot on which appears externally any distinguishing mark, defacement or mutilation.

Penalty for removing or attempting to remove ballots from room, or having any ballot outside election room.

SEC. 24. Any person who shall remove[2] or attempt to remove a ballot * * * from the election room, or have in his possession outside of the election room any ballot * * * either genuine or counterfeit, during the election, shall be guilty of a misdemeanor, and on conviction thereof by indictment, shall be fined not less than two hundred dollars and not more than five hundred dollars or may be imprisoned for a term not exceeding two years and not less than one.

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1. Office of Voters' Assistant repealed by Act May 20, 1897, 20 D. L. p. 403, Sec. 1. (p. 387 of this volume.) It was re-enacted March 8, 1901, 22 D. L. p. 109. (p. 396 of this volume.)

Sec. 1 of the Act of May 20, 1897, contains a provision as to physical disability (to which the above section referred) and provides for the calling in of an elector or electors, but on this question see Sec. 2 of the new Voters' Assistant Act above. (pp. 387 and 396 of this volume.)

2. For penalty for removing lead pencil or crayon, see Act March 2, 1901, 22 D. L. p. 108, Sec. 3. (p. 395 of this volume.) It is different from the penalty in the above section, which referred to stamps.

SEC. 25. That the election officers, * * * * before entering upon the duties of their office shall each take an oath that he will not disclose the name of any voter who may change or alter his ballot or for whom he voted or how he marked his ballot;[1] that he will not in any manner attempt to influence, intimidate, persuade, bribe or coerce any voter in the marking of his ballot or in the making of the choice of the person or persons for whom he votes, and any election officer * * * who shall violate his oath in any of these particulars shall be guilty of wilful and deliberate perjury and upon conviction thereof by indictment he shall in addition to the penalties and disabilities annexed to such crime be fined not more than five hundred dollars and may at the discretion of the court be imprisoned not exceeding two years.

Oath of election officers. Repealed. 20 D. L. 403. Sec. 1.

Repealed. 20 D. L. 403. Sec. 1.

Violation of oath, penalty.

SEC. 26. * * * * * * * * * *

Obsolete.

SEC. 27. In the counting of the votes any ballot which is not endorsed with the initials of the clerks of the election as provided in this Act, and any ballot which shall bear any distinguishing mark shall be void and shall not be counted, and any ballot or part of a ballot from which it is impossible to determine the elector's choice of candidates shall not be counted as to the candidate or candidates affected thereby;[2] *provided, however*, that such ballots and all disputed ballots shall be preserved by the inspector and at the close of the count placed with the seals of the ballot packages in the box into which the ballots shall have been put when read. The election officers shall also record on the tally list memoranda of such ballots and the condition of the seal of the ballot packages; and in any contest of election such ballot and seals may be submitted in evidence. Immediately on closing the polls all the ballots remaining unvoted or unused shall be counted and

What ballots not counted.

Proviso.

Disputed ballots to be preserved.

Memoranda.

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1. See Act May 20, 1897, 20 D. L. at p. 406, Secs. 10 and 11; (pp. 391-392 of this volume) and see Sec. 19 of this Act, p. 379.

2. As to ballots not to be received or deposited in the ballot box, see Act of June 1, 1898, 21 D. L. p. 118, Sec. 19; and as to a ballot marked in a certain way, being a marked ballot, and not to be counted, see Act of May 20, 1897, 20 D. L. pp. 403-404, Sec. 2. (p. 388 of this volume.)

Remaining ballots destroyed, how.

destroyed by the election officers of the several hundreds or election districts by totally consuming by fire, and the election officers shall certify the number of ballots so destroyed by them on the respective tally lists.[1]

Clerks of the Peace to destroy ballots left over.

The several Clerks of the Peace shall preserve the ballots left over in their hands after supplying the hundreds and election districts, as hereinbefore provided, until six o'clock P. M. of the day of election, and shall then count and destroy, by totally consuming by fire, all of such ballots but one, which he shall preserve in his office as a record together with his certificate of the number of ballots counted and destroyed by him.

Penalty for neglect or refusal of Clerk of the Peace to perform the duties under this act. Repealed, 22 D. L. 108, Sec. 3.

SEC. 28. If any Clerk of the Peace or his clerk or any one acting for him shall neglect or refuse to have the ballots * * * *[2] printed and prepared according to the provisions of this Act;[3] or shall neglect or refuse to deliver them in time to the parties properly entitled to receive them, or shall neglect or refuse to do or perform any other duty in and about the preparation and distribution of the ballots * * * required to be done and performed by him by the provisions of this Act, he shall be deemed guilty of a misdemeanor and shall be fined not less than one nor more than five thousand dollars and he may in the discretion of the court be imprisoned for not less than one nor more than five years.

Penalty for election officers revealing certain knowledge. Repealed, Act May 20, 1897, 20 D. L. 403.

SEC. 29. If any person being an election officer * * * shall reveal to any person how any elector has voted or what person or persons were voted for by him on any ballot or give any information concerning the appearance of any ballot voted, such person or persons so offending shall be guilty of a misdemeanor and on conviction thereof by indictment shall be fined not more than five hundred dollars and be imprisoned not less than two years and not more than five years.[4]

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1. As to the bollots voted and the ballot boxes, see Act June 1, 1898, 21 D. L. p. 122, Sec. 23; and also p. 132, Sec. 30.

2. See Act March 2, 1901, 22 D. L. 108, Sec. 3 as to lead pencils and crayons. (p. 395 of this volume.)

3. See Sec. 8 of this Act, p. 373.

4. See note to Sec. 25 of this Act, p. 383.

Penalty for falsely or fraudulently destroying, etc., any certificate of nominations.

SEC. 30. Any person who shall falsely make or fraudulently deface or fraudulently destroy any certificate of nomination or any part hereof; or file any certificate of nomination knowing the same or any part thereof to be falsely made; or suppress any certificate of nomination which has been duly filed or any part thereof; or forge or falsely make the official indorsement of any ballot;[1] or print or cause to be printed any imitation ballot or circulate the same; or conspire with others to do any of said acts, or induce or attempt to induce any other person to do any of said acts, whether or not said acts or any of them be committed or attempted to be committed, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred nor more than five hundred dollars or imprisoned in the discretion of the court not more than five years.

Penalty for violation of any provisions of this Act. Repealed, 20 D. L. 403, Sec. 1.

SEC. 31. If any Clerk of the Peace, inspector of election, clerk of election or judge of elections or trusty person * * *[2] shall willfully violate any of the provisions of this Act in the performance of any duty herein imposed upon him for the violation of which no other punishment is herein provided he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than three nor more than five hundred dollars and may in the discretion of the court be imprisoned for a term not exceeding three years.[3]

Duty of sheriff.

Compensation of inspector or trusty person

SEC. 32. The Sheriff shall make the ballot boxes and the tally lists and all other papers to be delivered to the several inspectors conform to the requirements of this Act.[4] The inspector or the trusty person for his services in receiving and delivering at the place of holding the election as aforesaid the packages containing the ballots * * * shall receive two dollars.

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1. See Act April 6, 1893 19 D. L. p 990, Sec 17. (p. 406 of this volume.)
2. Office of Voters' Assistant abolished. Act May 20, 1897, 20 D. L. p. 403, Sec. 1. (p. 387 of this volume). The office was re-enacted by Act March 8, 1901, 22 D. L. p. 109. (p. 396 of this volume.)
3. See Act May 20, 1897, 20 D. L. p. 407, Sec. 13, which provides the penalty shall not exceed two years. (This section included a challenger, also.) p. 392 this volume.
4. See Act June 1, 1898, 21 D. L. p. 109, Secs. 3 and 4.

Penalty for entering or attempting to enter election room or railing contrary to this Act.

SEC. 33. If any person not herein authorized so to do shall enter or attempt to enter the election room, or enter or attempt to enter within the railing leading to the entrance of the election room, or shall remain within thirty feet[1] of the polling place contrary to the provisions hereinbefore made, he shall be guilty of a misdemeanor and on conviction thereof be fined not more than two hundred dollars.[2]

Distinguishing marks on ballot.

Penalty for making.

SEC. 34. If any person shall induce or attempt to induce any elector to write, paste or otherwise place on his ballot the name of any person or any sign or device of any kind as a distinguishing mark by which to indicate to any other person how such elector has voted, or shall enter into or attempt to form any agreement or conspiracy with any other person to induce or attempt to induce electors or any electors to so place any distinguishing mark or name on his ballot whether or not said act be committed or attempted to be committed, such person so offending shall be guilty of a misdemeanor and on conviction be imprisoned for not exceeding two years.

Inducing election officers to violate the provisions of this Act.

Duty of inspector.

Oath of election officers.

SEC. 35. If any person shall induce or attempt to induce any election officer to violate any of the provisions of this Act whether or not such election officer shall violate or attempt to violate any of the provisions of this Act, such person so offending shall be guilty of a misdemeanor and on conviction shall be imprisoned for a term not exceeding five years. It shall be the duty of each inspector to distinctly read this and the preceding section to the election officers at the opening of the polls and each member thereof shall thereupon take an oath that he has not violated and will not violate the provisions of said sections.

Penalty for tearing down or destroying conveniences at voting place.

SEC. 36. Any person who shall during the election remove or destroy any of the supplies or other conveniences placed in the booths as aforesaid or delivered to the voter for the purpose of enabling the voter to prepare his ballot, or shall dur-

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1. See Act May 20, 1897, 20 D. L. p. 405, Sec. 6; p. 390 this volume.

2. See Act June 1, 1898, 21 D. L. p. 117, Secs. 15 and 16, and Secs. 17, 19 and 20 of this Act. See also Act of May 20, 1897, 20 D. L. p. 405, Sec. 7; p. 390 of this volume.

ing an election remove, tear down or deface the cards printed for the instruction of the voters, or shall during an election destroy or remove any booth, railing or other convenience provided for such election, or shall induce or attempt to induce any person to commit any of such acts whether or not any such acts are committed or attempted to be committed, shall be guilty of a misdemeanor and on conviction shall be punished by imprisonment for not less than six months nor more than one year.[1]

Expenses, how paid.

SEC. 37. * * * * * * * * * All necessary costs and expenses incurred by the inspector and Clerks of the Peace in carrying into effect the provisions of this Act shall be paid as other county expenses are paid.

To what elections the provisions of this Act apply.

SEC. 38. This Act shall apply to all municipal elections held in the City of Wilmington, * * * * * * * * but it shall not apply * to the election for members of the Board of Education in the City of Wilmington.

Inconsistent Acts repealed.

SEC. 39. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

Passed at Dover, May 15, 1891.

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[2]*AN ACT to Further Provide for the Secrecy and Purity of the Ballot.* 20 D. L. 403.

Abolished.

SECTION 1.[3] (*) * * * * * * * * Provided, that any person who shall be physically unable to prepare, * * * or fold his ballot by reason of such defective eyesight, or the loss of the use of one or both hands, or in-

Who may be assisted.

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1. See Act May 13, 1891, 19 D. L. p. 156, Sec. 49; p. 300 of this volume.

2. This Act is expressly made applicable to all municipal elections held in the City of Wilmington by Act of May 27, 1897, 20 D. L. 407. See p. 414 this volume.

3. The office of Voters' Assistant repealed by this Act, was re-enacted by Act of March 8, 1901, 22 D. L. p. 109, p. 396 this volume.

Under this Act (Sec. 2 thereof) the voter takes the Voters' Assistants in the booth upon mere *request* regardless of physical disability, i. e., under the Act of 1901.

ability to walk with safety without assistance, as manifestly renders him unable to prepare, * * * or fold his ballot, or to reach the polling place alone with safety, shall be permitted to bring with him into the election room and booth any elector (or two electors if the nature of the disability manifestly requires more than one, such as a total disability to walk) of the polling district for the purpose of rendering him the necessary assistance. In case any elector shall feign any of such physical defects he shall be guilty of a misdemeanor, and upon conviction thereof by indictment shall be fined one hundred dollars and shall be imprisoned for not more than two years.

Feigning physical defects, misdemeanor.

Punishment.

Printing of ballots.

SEC. 2. That all ballots hereafter to be printed under authority of any law of this State for use at any general or special election shall be so printed that no small square shall be placed opposite the name of any person on any ballot, and any elector desiring to vote at any such election shall stamp[1] his ballot in the large square enclosing the device at the head of any ticket printed on the official ballot, and may cross out the name of any person appearing on the said ticket under the square so stamped by him, and if he so desires, may insert in lieu of the name so crossed out the name of any other person nominated for the same office as the person whose name is crossed out, using only a black lead pencil[2] for such purpose. And it is hereby expressly provided that if in lieu of the name of any person so crossed out the name of any person not nominated for the office for which he is thus voted and whose name is not printed on said ballot, the ballot containing such name shall be treated as and is hereby declared to be a marked ballot and void and shall not be counted.

Marking ballot.

Changing ballot.

Marked ballot.

Challengers to have powers of peace officers.

SEC. 3. That the challengers of the Democratic and Republican parties, respectively, chosen for any general or special election hereafter to be held, shall be Peace Officers of the State with the same powers for preserving the peace as

1. Electors now "mark" their ballots. See note following.

2. An indelible black lead pencil or indelible black crayon is now required by Act of March 2, 1901, 22 D. L. p. 107, Secs. 1 and 2; p. 394 this volume.

Inspectors of Election now have, and in the election districts outside the City of Wilmington the challengers shall be stationed outside the entrance to the polling room, and shall not be allowed inside of said room. Any person resisting such challenger or challengers, shall be deemed guilty of a misdemeanor and upon conviction thereof by indictment shall be fined not more than one hundred dollars and may, at the discretion of the court, be imprisoned for a term not exceeding one year; and in the City of Wilmington the said challengers shall act as Clerks[1] of Election and perform all the duties now incumbent upon the Clerks of Election, and before entering upon such duties shall be sworn as Clerks of Election are now required to be sworn to perform their duties as Clerks of Election, and receive compensation as such. Such Clerks of Election and challengers in the City of Wilmington shall be appointed[2] by the respective County Committees of the Democratic and Republican parties, and the challengers in the election districts outside of the City of Wilmington shall be selected and named by the County Committees of the said parties.

Not to enter polling places.

Resisting challengers misdemeanor.

In Wilmington challengers shall act as clerks of election.

Oath.

How appointed.

SEC. 4. The County Committees of the Democratic and Republican parties in each county shall name and select each a Judge[3] of Election for each election district outside of the City of Wilmington, who shall be appointed and qualified at the time and perform the duties as now provided by law of Judges of Election in the districts for which they are chosen respectively.

Judges, how selected.

SEC. 5. That wherever in the laws of this State relating to general or special elections the words "principal political parties" now occur, or words equivalent thereto or so designating parties shall be used, the same shall be taken to designate and are hereby declared to designate the Democratic party and the Republican party.

Words defined.

1. See Act June 1, 1898, 21 D. L. p. 116, Sec. 13, which provides that each Judge shall choose one clerk of the election.

2. See above note 1, and note 3, p. 370 of this volume.

3. Supplied by Sec. 10 of above Act. 21 D. L. at p. 114.

Special officers at entrance of polling place.

SEC. 6. That the Democratic and Republican County Committees may each select and designate one suitable, reputable and sober person as a special officer to stand at the entrance of the polling place, to be not less than thirty feet away from the entrance to the voting room as now provided by law, to regulate the admission of persons to the polling place, and while so stationed and performing their duties as herein provided, the persons so designated shall be clothed with all the powers of officers of the peace as those now given by law to inspectors of election, and any person resisting such special officer shall be deemed guilty of a misdemeanor, and upon conviction thereof by indictment, shall be fined not more than one hundred dollars and may, at the discretion of the court, be imprisoned for a term not exceeding one year.

Unlawfully entering voting room or doing any unlawful act.

SEC. 7.[1] Before the hour of opening the polls on the day of election and at the time of opening the election and afterwards at any time during the day of the election and before the hour of closing the election, if any person or persons shall enter the voting room or attempt to enter the same for the purpose of interfering with the election officers in the discharge of their duties as such or for any purpose, or shall attempt to molest, disturb or prevent the election officers from proceeding regularly with any general or special election, or shall take charge of or attempt to take charge of any voting room within in the time herein mentioned for the purpose of preventing or delaying an election or for any other purpose on election day, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than three nor more than five hundred dollars, and shall be imprisoned for a term not exceeding three years, *provided*, that a single representative of each political party, having nominated a ticket, and such party being represented on the ballot then printed for any general or special election, may at the opening of the election be present to aid in the

Misdemeanor.

Punishment.

Each party may be represented at the preparation for and opening of election.

1. This section is supplied in almost similar language in Sec. 16 of Act of June 1, 1898, 21 D. L. p. 117.

proper qualification of the several election officers, and to see that the ballot boxes, tickets, blanks, etc., are all in proper condition; but as soon as the election officers shall be qualified and ready to open the elections, the proper hour therefor having arrived, such representatives of each political party shall immediately retire from the election room; *provided, further,* that such persons may first vote before retiring if they shall so desire.

Clerk of Peace to have ballots folded.

SEC. 8. That in addition to the duties now required of the Clerk of the Peace in said county relative to the printing and delivering of the ballots, each of said Clerks of the Peace shall, before delivering said ballots to the several inspectors of his county as now required by law, cause said ballots to be folded in one uniform manner in his county, in convenient form to be deposited in the ballot boxes, and so folded that no part of the face of the ballot shall be exposed.[1]

Initials of clerks of election on back of ballots.

SEC. 9. That the clerks of the elections shall write their initials in ink across the back of the ballot as folded, and near the middle thereof, in lieu of the manner in which they have heretofore been required to do; and the voter before leaving the booth or compartment shall fold his ballot as near as he can in the same manner in which it was handed to him; but failing to do this he must fold it so that no part of the face thereof shall be exposed[2] and so that the initials of the clerks of the election shall be exposed.

Folding ballot by voter.

Elector assisting voter disclosing nature of vote.

SEC. 10. In case any elector who may be selected to assist any person by reason of the physical defects hereinabove mentioned shall reveal how such elector has voted or what person or persons were voted for by him on any ballot or give any information concerning the appearance of any bal-

1. These duties are performed by Department of Elections as to Municipal Elections in Wilmington. See Act of April 6, 1893, 19 D. L. p. 986, Sec. 8, at p. 401 this volume.

2. There shall be no examination of a ballot except to see that it is single. Act June 1, 1898. 21 D. L. p. 118, Sec. 18.

lot voted, such elector or electors so offending shall be guilty of a misdemeanor and upon conviction thereof by indictment shall be fined one hundred dollars and shall be imprisoned not less than one nor more than three years.[1]

Misdemeanor.

Punishment.

Officer of election committing unlawful act.

SEC. 11. That if any inspector of election, judge of election, clerk of election or challenger, shall in any way or manner or by any means or device whatsoever make known or communicate by any means whatsoever or shall attempt to make known or communicate by any means whatsoever, to any person or persons on election day while the election is in progress, or at any time thereafter, how any elector has or shall have voted, he shall be guilty of a misdemeanor and upon conviction thereof he shall be fined not less than one hundred dollars and may, in the discretion of the court, be imprisoned for a term not exceeding one year.[2]

Misdemeanor.

Punishment.

Secreting one's self in election room.

SEC. 12. That if any person other than the election officers shall secrete or attempt to secrete himself in any part of the polling room during the hours of election for any purpose whatsoever, he shall be deemed guilty of a misdemeanor and upon conviction thereof he shall be fined not less than one hundred dollars, and may in the discretion of the court be imprisoned for a term not exceeding one year.

Misdemeanor.

Punishment.

Any violation of this act.

SEC. 13. If any clerk of the peace, inspector of election, judge of election, clerk of election or challenger, shall wilfully violate any of the provisions of this act in the performance of any duty herein imposed upon him for the violation of which no other punishment is now provided by law, he shall be deemed guilty of a misdemeanor and upon conviction thereof he shall be fined not less (than) three nor more than five hundred dollars and may in the discretion of the court be imprisoned for a term not exceeding two years.

Misdemeanor.

Punishment.

1. See note to Sec. 11 of this Act.

2. See Act May 15, 1891, 19 D. L. 85, Secs. 25 and 29 at pp. 97 and 99; (pp. 383-384 of this volume.)

SEC. 14. That all acts or parts of acts inconsistent with this act are hereby repealed.

Passed at Dover, May 20, 1897.

A FURTHER SUPPLEMENT to the act entitled "An Act Regulating the General Election."

10 D. L. pp. 35-36.

SECTION 1. That if any person shall, either for himself or for another or others, at any time either before or pending any election in this State for public officers or during the reading out and tallying the votes, lay any wager or bet (*a*) on the result of such election or on the election or defeat of any candidate or person voted for at such election, every person so offending shall forfeit and pay to any person who will sue for the same, double the amount of such wager or bet, or double the value of the thing betted; to be recovered with costs by any person who will sue for the same in his own name by an action of debt as other actions for a like amount are recoverable by law. The stake-holder shall in all cases be a competent witness to prove such illegal wager.

Penalty for betting on elections.

Stakeholder competent witness.

(*a*) "The bet was between Alexander Porter, the pl'tiff, and a certain Joseph Williams, of fifty dollars, on each side, and was in these words: "that if Michael Downey should receive more votes in the City of Wilmington and hundred of Christiana * * than Joseph Williams would receive in the whole county, then Porter was to win; otherwise William to win." (517.)

Chief Justice: "On another ground, also, this bet seems to us to be objectionable, that of improperly interfering with the private rights and the feelings of third persons. Upon what principle had the parties here the right to bet on the personal popularity of Michael Downy or of Joseph Williams. These individuals had the right to stand before the public, and to have their claims to office tested without such an interference by third persons as must necessarily have some effect on the result. Our opinion, therefore, is, that the bet is illegal."

Porter vs. Sawyer, 1 Har. 517 at 519. (yr. 1835)

"The action below was on a wager on the result of the general election in New Castle County, and the bet was made on the election day, after the polls were closed, but before the votes were canvassed.

The only question was, whether such a wager could be recovered in a court of justice. The Court decided that the matter was within the policy prohibiting betting on elections, and that the case was within the principle of Porter vs. Sawyer, 1 Har. 517."

Gardner, d. b. a. vs. Nolen, p. b. r. 3 Har. 420. (yr. 1842)

SEC. 2. If any stake-holder (*a*) or person with whom any money or thing so illegally betted shall be deposited, shall at

Penalty on stakeholder paying over.

any time either before or after the bet shall have been decided, pay over or deliver to either or both of the persons betting the same, or to any other person by the order or for the use of them or either of them, every such stake-holder or depository shall be deemed equally guilty with the person so betting, and shall be liable to the same forfeitures, to be sued for and recovered in like manner—and either of the persons betting shall be a competent witness against him.

Persons betting to be competent witnesses.

(*a*) Recovery cannot be had against a stakeholder. Gardner vs. Grubb, 4 Houst. 448. (yr. 1872) Porter vs. Sawyer, 1 Har. 517 at 519. (yr. 1835)

SEC. 3. * * * * * * * * * *

Passed at Dover, February 11, 1845.

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22 D. L. 107.

AN ACT providing that the official ballots shall hereafter be marked by the Voter when indicating his Choice of Candidates with an indelible black lead pencil or indelible black crayon.

SECTION 1. That whenever, under any provision of the laws of this State, any voter or elector, at any election hereafter to be held in this State, is required to indicate on the official ballot the candidates for whom he desires to vote at such election, by marking his ballot in such manner as to indicate for whom he casts his vote, every such voter or elector, at any election aforesaid, shall indicate his choice of candidates aforesaid by marking his ballot with an indelible black lead pencil or indelible black crayon, and shall not use any other means or instrumentality for such purpose.

To mark the official ballot.

What to be used.

SEC. 2. That any and all mark or marks now required by the laws of this State, to be made on any official ballot, used at any election hereafter held in this State, shall be made by the use of the pencil or crayon mentioned in Section 1 of this Act.

Shall use black pencil or crayon.

Any elector desiring to vote at any such election shall make a mark, crossing two lines with the pencil or crayon aforesaid, in the large square enclosing the device at the head or top of any ticket printed on the official ballot, in lieu of any

Mark made shall be two crossed lines in the square.

mark now required to be made with a stamp; provided, however, that any voter may cross out, or scratch off, the name of any person appearing on the said ballot under the square so marked by him, and in lieu thereof may or may not write in said ballot immediately over the name so crossed out or scratched off, the name of any other person who is a candidate for the same office at said election, and the said changes shall be made with the pencil or crayon aforesaid.

May scratch off name of any candidate, but only with black pencil aforesaid.

May or may not write in name of any other candidate.

Change to be made with pencil or crayon aforesaid.

SEC. 3. That it shall be the duty of the several persons who, at the time this Act becomes a law, are required by the laws of this State to provide and furnish any stamp for the use of the voters at any election, to provide and furnish, in lieu thereof, at least one dozen indelible black lead pencils or black crayons for and to each and every election district, in which any election as aforesaid is to be held, for the use of the voters in said election district at any such election. If any person shall mutilate, destroy, cancel or take away[1] from any election district any such pencil or crayon, so provided and furnished as aforesaid, before or during the time any election mentioned in this Act is being held, he, she or they, shall be guilty of a misdemeanor and shall be fined not exceeding five hundred dollars or imprisoned not exceeding one year, or both, in the discretion of the Court.

Duty of those required to furnish means for marking ballot.

Penalty for removing or mutilating pencils or crayons.

Fine therefor.

SEC. 4. That it shall be the duty of the several clerks of the election in the several election districts in this State who were heretofore required to deliver to the electors or voters, the stamp heretofore required, to deliver and hand to each voter thereat one of the said pencils for the purpose of marking his ballot, and it shall be the duty of every such voter at any election mentioned in this Act at the time of handing his ballot to the Inspector of Election or other person authorized by law to receive his ballot, to return to the said clerks of election the said pencil or crayon furnished him as aforesaid.

Duty of election clerk to furnish voter with pencil instead of stamp.

Voter to return pencil or crayon to clerk after voting.

SEC. 5. That if any person shall violate any of the provisions of this Act, not herein specially provided for, he, she

Violation of this act to be a misdemeanor.

1. See Act May 15, 1891, 19 D. L. 94, Sec. 19; p. 379 this volume. See also p. 388, (Sec. 2).

or they shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars or imprisoned not exceeding one year, or both, in the discretion of the Court.

SEC. 6. That all provisions of law in conflict with the provisions of this Act are hereby repealed.

Approved March 2, A. D. 1901.

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22 D. L. 109.

AN ACT creating the office of Voters' Assistant and prescribing the Duties thereof.

SECTION 1. That on or before the tenth day of October in each and every year in which a general election is held in this State, it shall be the duty of the Governor to select, appoint and commission an honest and capable man from each of the two principal political parties in each and every election district in this State, including the districts in the City of Wilmington, who shall be known as Voters' Assistants.

Governor to appoint voters' assistants on or before October 10th.

The county committees of the two parties having highest and next highest number of votes to submit list of names.

The County Committees of the two principal political parties, which at the general election next preceding cast the highest and next highest, number of votes respectively, in such County, shall each submit to the Governor the names of three men for such appointment and from said names the Governor shall select one to represent each party, but in no case no name or names is or are submitted by either or both, the Governor shall then make such appointment or appointments as he may see fit.

If none are submitted Governor to appoint.

SEC. 2. That the Voters' Assistants shall be stationed within the room where the election is being held, and shall, when requested by any voter assist such voter to mark, alter, change, scratch, or fold his ballot in the presence of the voter and of each other, and shall also, when requested by the voter, read over to him the names of the candidates on the ballot which he desires to vote.[1]

Voters' assistants to be in election room.

Shall assist voter when requested.

1. See Sec. 1 of the Act of May 20, 1897, 20 D. L. 403 (which Act repealed the first Voters' Assistant law) which provides that, in case of physical disability the voter may take an elector, or, if necessary, two of them, into the booth with him. P. 387 this volume.

SEC. 3. That if any Voters' Assistant make a false declaration to any voter he shall upon conviction be fined one hundred dollars, and any Voters' Assistant who shall decline any voter in any way shall be guilty of a misdemeanor, and on conviction, shall be fined not less than Two hundred dollars nor more than Five hundred dollars, and may in the discretion of the Court be imprisoned for a term not exceeding five years. Penalty for false declaration.

SEC. 4. That all Acts or parts of Acts inconsistent herewith be and the same are hereby repealed.

Approved March 8, A. D. 1901.

AN ACT to Amend Chapter 418, Volume 14, Laws of Delaware, entitled "An Act Regulating the Sale of Intoxicating Liquors." 25 D. L. 229.

SECTION 1. That Chapter 418, Volume 14, Laws of Delaware, be and the same is hereby amended by striking out the words "and no person licensed to sell liquors shall sell, give away, or dispense any intoxicating liquors on the day of any general, special or municipal election within one mile of the place where the same is held" in the eleventh, twelfth, thirteenth and fourteenth lines of Section 14 of said Chapter and inserting in lieu thereof "And no person licensed to sell liquor shall sell, give away, or dispense any intoxicating liquors on the day of any general election; nor shall any person licensed to sell liquor, sell, give away, or dispense any intoxicating liquors on the day of any special or municipal election within one mile of the place where the said special or municipal election is held." Chap. 418, Vol. 14, amended regulating the sale of intoxicating liquors.

Approved April 5, A. D. 1909.

AN ACT in relation to Municipal Elections to be held in the City of Wilmington. 19 D. L. 984.

SECTION 1. That Chapter 194, Volume 18, Laws of Delaware, entitled "An Act to amend an Act entitled 'An Act to revise and consolidate the Statutes relating to the City of Wilmington,'" as amended by Chapter 668, Volume 18, Acts repealed. 18 D. L. 366.

Laws of Delaware, entitled "An Act to amend Chapter 194 of Volume 18 of the Laws of Delaware," and as published as amended, in Chapter 669, Volume 18, Laws of Delaware, entitled "An Act to amend an Act entitled 'An Act to revise and consolidate the Statutes relating to the City of Wilmington,' as amended April 25, 1889," be and the same is hereby repealed.

18 D. L. 896.

18 D. L. 904.

Elections in City of Wilmington.

Exceptions.

Registration and canvass.

How conducted.

SEC. 2. That from and after the passage of this Act, at all elections held in the City of Wilmington, excepting elections for members "The Board of Public Education in Wilmington," the registration, election and canvass of the vote cast thereat shall in all respects be conducted in conformity with the provisions of the election and registration laws governing general elections (*a*) in the City of Wilmington, except as in this Act otherwise provided.[1]

(*a*) This section expressly applies the old registration law of May 13, 1891, and the ballot law of May 15, 1891, to municipal elections, except as otherwise provided for in the Act. The above mentioned Ballot law, in Sec. 38 thereof, also expressly applies that law to municipal elections in Wilmington. The Registration Act of 1898 does not expressly make its provisions applicable to municipal elections, and whether Sec. 2 of this Act can be given a prospective application is a question. The law, generally, as to general statutes applying to municipalities, is as follows:

Layton, Justice: " * it is a principle of law, that a general law does not affect corporations or corporate rights, unless they are expressly mentioned in terms in the law. The election laws refer to State elections and State officers."

State vs. Wilmington City Council, 3 Har. 294 at 310. (yr. 1840)

See Sec. 14, "c" of the Charter.

Duties of Department of Elections.

18 D. L. 366.

SEC. 3. All duties imposed upon and all powers vested in the Department of Elections, created by an Act entitled "An Act to amend an Act entitled 'An Act to revise and consolidate the Statutes relating to the City of Wilmington,' Chapter 194, Volume 18, Laws of Delaware," are hereby imposed upon and vested in the Department of Elections created by an Act entitled "An Act to provide for the registra-

1. This section, when the law was passed, referred to the registration and election laws of 1891, then in force; but it has been given a prospective application, and made to refer to all subsequent laws not inconsistent with its own provisions.

tion of voters in the City of Wilmington," Chapter 39, Volume 18, Laws of Delaware.[1]

Shall hold all municipal elections.

SEC. 4. The election officers and their successors, appointed in accordance with the provisions of the aforesaid Act entitled "An Act to provide for the registration of voters in the City of Wilmington," shall hold all municipal elections and shall be entitled to receive from the City of Wilmington as compensation for their services, the amounts stated and in the manner provided by the aforesaid Act entitled "An Act to provide for the registration of voters in the City of Wilmington."[2]

Compensation.

Districts.

SEC. 5. At all municipal elections, the election districts shall be the same as those designated by the Department of Elections for the general election next preceding.

Books, etc.

SEC. 6. The Department of Elections for the City of Wilmington created by the Act which by Section 1 of this Act is repealed, shall immediately upon the passage of this Act transfer, deliver and make over to the Department of Elections created by the Act entitled "An Act to provide for the registration of voters in the City of Wilmington," all books, records, papers, pamphlets and election paraphernalia whatsoever now in its possession or under its control in anywise pertaining to or connected with the said Department of Elections. Each member of the Department of Elections shall receive as compensation for his services in any year in which a municipal election is held a salary for such year of five hundred dollars, payable by the city as other officers of the City of Wilmington are paid.[3]

Annual salary.

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1. For the Department of Elections, its powers, duties, &c., see the following Acts:

Act May 20, 1898, 21 D. L. p. 139 Secs. 1 and 2 p. 329-330 this volume; Act June 1, 1898, 21 D. L. p. 94, p. 337 this volume; Act June 1, 1898, 21 D. L. p. 146, p. 337 this volume; Act March 8, 1901, 22 D. L. p. 117, p. 338 this volume; Act March 9, 1907, 24 D. L. p. 153, p. 341 this volume; see Act May 13, 1891, 19 D. L. p. 128, p. 272 this volume.

2. For the numerous changes in the Registration law referred to in this section, see the Act itself, p. 272 this volume.

3. See Act May 13, 1891, 19 D. L. 128, Sec. 2, p. 272 this volume.

Revision of general registration.

SEC. 7. That on the [fourth][1] Saturday next preceding the day of any municipal election there shall be a revision of the general registration, which revision shall be made in accordance with the provisions of the aforesaid Act entitled "An Act to provide for the registration of voters in the City of Wilmington."[2] To facilitate the transfer of names from one book to another in case of removals of all kinds at least one member of the Department of Elections shall sit at the office of the Department of Elections every day (excepting Sunday) of the two weeks preceding the last week in the month of April next preceding said municipal election, between the hours of three and five o'clock in the afternoon, and during the last week of the said month between the hours of three and five o'clock in the afternoon and seven and eight o'clock in the evening, and do and perform the following acts, to wit: The member or members of the Department of Elections, sitting as aforesaid, may in any case in which it is deemed necessary, administer to an applicant who personally presents himself, the oath prescribed by Section 6 of Chapter 39, Volume 19, Laws of Delaware, and if in the judgment of said member or members of the Department of Elections as aforesaid the statements and representations made by the applicant are deemed to be true and correct, and if it appear from the registration books that the applicant was duly registered and had voted[3] at the general election next preceding, he or they shall, with the aid and assistance of the clerk of the Department of Elections, if his assistance be required, proceed to make such entries in said registration books and public copies as are required to be done by the inspectors of election in such cases, and act and conform in all respects by and in accordance with the provisions of Section 6 of the aforesaid act relative there-

Sittings.

Hours.

Oaths.

Entries of removals.

1. Revision of Registration is now on the "fourth" Saturday preceding a municipal election. Act March 24 1903, 22 D. L. p. 594, Sec. 1. (See Sec. 18, p. 352 this volume.)

2. Registration is now made almost in toto, under the Act of May 27, 1898, 21 D. L. p. 69, et seq, p. 301 this volume.

The hours for revision of registration, however, are as set out in Sec. 4, part 3 of the Registration Act above referred to, viz, the Act of May 13, 1891, 19 D. L. p. 136. (p. 278 of this volume.)

3. It is not necessary, now, that he should have so voted. See notes 2 and 3 to Sec. 11 of this Act. (p. 404 of this volume.)

to, *provided, however*, that the lines to be drawn through the name duly stricken from the registration books and public copies and all entries made by said Department of Elections, or members sitting as aforesaid, in said books of any kind or nature, shall be done with red ink. And said entries of removal in said books, when so made, shall be of the same legal force and effect as though made by the inspectors of election on the day set apart in this Act for the revision of the registration.

Names to be erased from books.

How erased.

Effect of

Should any one impersonate a voter and through fraud or misrepresentation secure the transfer of the said voter's name from the registration books of the election district where he is registered to the registration books of any other election district such voter shall not thereby lose his right to vote in the election district in which he was legally registered and from which he had not removed; but every such person impersonating or making the misrepresentations aforesaid, shall upon conviction thereof be adjudged guilty of a misdemeanor and shall be punished for each and every offense by imprisonment in the county jail of not more than two years or by a fine of not more than two hundred dollars or both.

False impersonation or misrepresentation.

Legally qualified voters not thereby disqualified.

Misdemeanor.

Penalty.

SEC. 8. All Acts required to be performed by or duties imposed upon the Clerk of the Peace or any other county officer by the election, registration or ballot laws governing the general elections in the City of Wilmington shall, in relation to municipal elections, devolve upon and be performed by the Department of Elections.

Other duties of department.

SEC. 9. The Department of Elections shall have power to dismiss any election officer, clerk or assistant at any time and supply his place with another person.[1] On the first day of January[2] in any year in which there is to be held a general or

Power to dismiss election officers.

1. For similar powers, see Act June 1, 1898, 21 D. L. p. 146 (p. 337 of this volume) and Act of May 20, 1898, 21 D. L. at p. 140, Sec. 3, part II, (p. 331 of this volume.)

The Judges however, appoint the clerks. Act June 1, 1898, 21 D. L. at p. 116, Sec. 13.

2. Under the Act of March 8, 1901, 22 D. L. p. 118, Sec. 6, the Department organizes in the month of April and at that time, inter alia, appoints a clerk. (p. 340 of this volume.)

municipal election, (and in the present year as soon as they deem proper) the said Department of Elections shall employ a clerk,[1] and at any time thereafter, they may employ other assistants, as in the judgment of the members of the said department shall be necessary and proper for the full performance by the department of the duties by this Act imposed, *provided* the expense thereof shall not exceed fifteen hundred dollars in one year, the salaries for the clerk and assistants aforesaid to be paid as other municipal election expenses are paid.[2]

Clerk.

Assistants.

Salary, how paid.

Nomination of candidates.

Political parties, what so deemed.

Certificates, when required.

SEC. 10. Any organization of bona fide citizens and voters in the City of Wilmington, which shall by means of a convention, primary election or otherwise, nominate candidates for offices to be filled by the people at any municipal election, shall be deemed and taken to be a political party within the meaning of this Act. No organization shall be taken as a political party that does not represent at least one hundred bona fide citizens and voters of the City of Wilmington. If the Department of Elections should have any doubt as to the sufficiency of the number of bona fide voters represented by any organization in the said City of Wilmington, they may demand a certificate of twenty-five voters belonging to such an organization as to that fact.

Ballots.

The Department of Elections shall cause to be printed the ballots to be used at municipal elections, in the same manner and under the same laws, as far as they can relate and may be applicable to municipal elections in the City of Wilmington, as the Clerk of the Peace is directed so to do for general elections.

Nominations to be certified, and by whom.

How made and contents

The nomination of the candidates for offices to be filled by the people at a municipal election shall be certified to the Department of Elections aforesaid, by the presiding officer and secretary of the proper party convention or committee. The certificate shall be in writing and shall contain the name of

1. See above note, 2, p. 401 of this volume.
2. See Act May 20, 1898, 21 D. L. p. 140, Sec. 3. II. and Sec. 5, p. 144; (pp. 331 and 336 of this volume.)

each person nominated, his residence and the office for which he is nominated.

Acknowledgment of.

The persons making such certificates shall add to their signatures their respective places of residence and shall acknowledge such certificate before an officer duly authorized to take acknowledgments of deeds, and a certificate of such acknowledgment shall be affixed to the instrument. The certificate shall also designate a title for the party which such convention or committee represents, together with any simple figure or device by which its list of candidates may be designated on the ballot.

Title of political party.

Figure or device.

Restrictions as to use of.

The same devices shall be used at the said municipal election as were used at the general election next preceding the said municipal election; *provided, however,* that no device used at the said general election shall be used at the said municipal election unless the party that selected and used said device at the general election, nominate candidates to be voted for at the said municipal election; *and provided further,* that if any new political party or parties should be formed after the said general election, and within twenty days prior to the said municipal election, the said party or parties shall present their device or devices properly certified to the Department of Elections within twenty days prior to the said municipal election; such figure or device may be a star, an eagle, a plow or some such appropriate symbol, but the coat of arms or seal of the State, or of the United States, or the flag of the United States, or a device previously selected and used at the election next preceding by another political party, shall not be used as the figure or device of a political party at a municipal election. In case of death, resignation or removal of any candidate subsequent to nomination, a supplemental certificate of nomination may be filed by the proper officers as aforesaid. In case of a division in any party in the City of Wilmington or a ward thereof and claim is made by two or more factions to the same party name or title, figure or device, the Department of Elections within ten days after it has received the certificates of the contending factions, shall determine to which faction the name, title or figure properly belongs, giving the preference

Device of new political party.

Requirements.

Devices prohibited.

Supplemental certificates, when filed.

In case of divisions or disputes within political parties, the Department of Elections to decide in certain cases.

New title and device, when.

Certificate, when to be filed.

to the convention or primary election held at the time and place designated in the call of the regularly constituted party authorities; and if within five days thereafter, the other faction shall present no other party name or title, figure or device and certify the same to the Department of Elections, the latter shall select some suitable title, figure or device for said faction and the same shall be placed above the list of their candidates on the ballots. The certificates of nomination herein directed to be filed with the Department of Elections shall be filed not less than ten days before the day fixed by law for the election of the persons in nomination.[1]

Qualification of voters.

Change of domicile, effect of.

SEC. 11. That [at] all municipal elections every male citizen of the age of twenty-one years (*a*) and upwards, having resided within the said city for three months next previous to the election, and in the election district where he offers to vote for thirty days next preceding the election, who being otherwise qualified to vote at all State elections, and who shall have registered at the registration for the general election next prior to the election at which he offers to vote, and who shall have voted thereat,[2] as shown by the registration books of the inspectors of that election, or who shall have registered at a revision of such registration and no other, shall be entitled to vote;[3] if any person who may have had his domicile in said city, shall actually remove to any other place with the intention of remaining there an indefinite time as a place of domicile, he shall thereby lose his qualification of residence, notwithstanding he may entertain a floating intention of returning at such future time. (*b*)

(*a*) *Bayard, C. J.*: "It is not necessary that he shall have entered upon his birthday, or he would be more than twenty-one years old. He is, therefore, of age the day before the anni-

1. See Act May 15, 1891, 19 D. L. p. 89, Sec. 7, requiring publication of nominations, (p. 373 of this volume), and also Sec. 8 of the Act of April 6, 1893, (this Act,) and 19 D. L. p. 986, p. 401 this volume.

2. Any person whose name is on the "Voting Books of Qualified Voters" may now vote at a subsequent municipal election, even though he did not vote at the preceding general election. See Act March 24, 1903, 22 D. L. p. 594, Sec. 1. (See Sec. 18, p. 352 of this volume.)

3. One does not have to re-register now. If his name is on the "Voting Books of Qualified Voters" he may vote. See above note 2.

versary of his birth; and as the law takes no notice of fractions of a day, he is necessarily of age the whole of the day before his twenty-first birthday; and upon any and every moment of that day may do any act which any man may lawfully do.''

State vs. Clarke, 3 Har. 557 at 558. (yr. 1840)

(*b*) Residence is not always easy to ascertain.

The Court: ''Domicile or residence in a legal sense, is determined by the intention of the party. He cannot have two homes at the same time. When he acquires another he loses that home which he has exchanged for the new one. To effect this change there must be both *act and intention*. ''Mere intention to acquire a new domicile without the fact of removal avails nothing; neither does the fact of removal without the intention. The defendant's *intention* to leave Wilmington did not change his domicile unless he *went* to Philadelphia, in pursuance of that intention; but if he did go in execution of any intention to leave this State, as his place of residence, and find a home elsewhere, that moment he lost his residence here. What his intention was in that behalf must be collected from his acts and declarations. * * If, for instance, a mechanic in Wilmington, without any intention of changing his residence, should go to Philadelphia to do a job of work, or to work generally, until a job which he had engaged in Wilmington was ready for him, in that case the exercise of his trade in Philadelphia would not be sufficient evidence of his domicile there. But if a person, intending to break up his business in Wilmington and remove to Philadelphia or elsewhere as a home, should go there and exercise his trade, this would be sufficient evidence of a change of domicile, even though he should, before leaving, secure a job of work in Wilmington, and intend to come back for the purpose of doing it,'' and even though ''he may entertain a floating intention to return at some future period.''

State vs. Frest, 4 Har. 558. (yr. 1847) Rev. Code 1903, p. 141, Sec. 3.

State vs. M'Donald, 4 Har. 555 at 556. (yr. 1845)

Members of Council.

Moving from ward, effect of.

SEC. 12. The qualified voters of each ward shall, at every biennial election in June, choose a member of Council for their ward, resident in the ward. A member moving out of the ward from which he was elected shall thereby lose his office and the City Council shall fill the vacancy.[1]

Extension of city limits.

New election districts.

SEC. 13. Whenever by an Act of the General Assembly of the State of Delaware or otherwise, the corporate limits of the City of Wilmington are extended and new territory is acquired and added thereto, the said Department of Elections is hereby authorized, directed and vested with the power to lay out and designate new election districts, in the manner now by law provided, and appoint election officers therefor.

1. See Sec. 11 of the Charter.

Failure to hold election shall not dissolve the corporation. Authority of officers to continue.

SEC. 14. A failure to hold an election on election day, or the omission to execute any authority conferred by this Act shall not dissolve the corporation, but the authority of each officer shall continue until a new election can be legally held.

Elections to be by ballot.

Plurality of votes to elect.

Hours of election.

SEC. 15. All elections shall be by ballot and a plurality (*a*) of votes cast shall make a choice; the ballots used shall conform in all respects to those required by the general law of the State. Each city election shall be open between the hours of eleven o'clock in the forenoon and twelve o'clock noon and continue open until seven o'clock in the afternoon, when the same shall be closed.

(*a*) See Secs. 30, par. 2, "a" and 31, "c" of the Charter. In the absence of an express provision it has been held that it requires a majority vote.

Election expenses.

How paid.

Annual levy.

SEC. 16. The legal compensation of all members of the Department of Elections, inspectors of election, poll clerks and other officers of election, the costs and expenses of all necessary election notices, posters, maps, advertisements, registers, books, blanks and stationery, the rent and cost of fitting up, warming, lighting, cleaning and safe keeping of all places of registration and polling places, of furnishing, repairing and carting ballot boxes, and all supplies of every kind and nature for city elections in the City of Wilmington, shall be a city charge and shall upon proper certificates and vouchers be paid in the same manner as by law provided for the payment of other expenses of the said City of Wilmington. The City Council of the said City of Wilmington shall yearly levy upon the estates, real and personal, of the said City of Wilmington the amount estimated to be required to pay the expenses of registration and of all city elections which may be held in the said city during the year, and all expenses incurred by virtue of the provisions of this Act.

Vacancies in candidates, how filled.

SEC. 17. In case of death, removal or resignation of any candidate after the printing of such ballots and before such election, it shall be lawful for the chairman of the city, ward or district political organization by which such candidate was nominated, to make a nomination to fill such vacancy and to

provide the election officers of each election district in which such candidate is to be voted for with a number of pasters containing only the name of such candidate at least equal to the number of ballots provided for each election district, but no pasters shall be given to or received by any one except such election officers and such chairman, and it shall be the duty of the clerks of election to put one of such pasters in a careful and proper manner and in the proper place on each ballot before they shall sign their initials thereon. If the printer of such ballots, or any person employed in printing the same, shall give or deliver or knowingly permit to be taken any of said ballots by any person other than the Department of Elections by the order of and for whom such ballots are being printed, or shall print or cause or permit to be printed any ballot in any other form[1] than the one described by this Act and the Act entitled "An Act to provide for the secrecy and purity of the ballot," or with any other names thereon than those authorized by the Department of Elections, or with the names spelled or the names or devices thereon arranged in any other way than that authorized and directed by the said Department of Elections, he shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than one nor more than five years or both at the discretion of the court.[2] The Department of Elections shall make the ballot boxes and the tally lists, and all other papers to be delivered to the several inspectors, conform to the requirements of this Act and the Act entitled "An Act to provide for the secrecy and purity of the ballot."

Pasters for ballots.

Clerks of election, duty of.

Printer of ballots, duty of.

Restrictions and what is prohibited.

Misdemeanor.

Penalty.

Ballot boxes and tally lists to conform.

SEC. 18. As soon as the polls of an election shall have been finally closed, the inspectors of election in their several districts shall immediately, and at the place of the polls, proceed to canvass the votes. Such canvass shall be public and

Close of election.

Duty of inspectors.

Canvass of votes to be public.

1. As to the form of the ballot, especially the "square" of the same, see note to Sec. 8 of the Act above referred to, viz, Act of May 15, 1891, 19 D. L. p. 89, p. 373 this volume; and see also Sec. 30 of said Act, p. 385 of this volume; and see Act May 20, 1897, 20 D. L. p. 403, Sec. 2, (p. 388 of this volume.)

2. For the same provision as to the general election law, see Act May 15, 1891, 19 D. L. p. 90, Sec. 10.

shall not be adjourned or postponed until it shall have been fully completed and the several statements hereinafter required to be made by the inspectors shall have been made out and signed by them. No vote shall be counted or canvassed in any election district unless three qualified voters in such election district, if so many claim that privilege, are allowed to be present, or so near that they can see whether the duties of said inspectors are fully and faithfully performed.

Canvass, how to be conducted.

SEC. 19. The canvass shall commence by a comparison of the poll lists from the commencement and a correction of any mistakes that may be found thereon; and such comparison shall be continued until the poll lists agree as to the number of ballots deposited in the box. When they have been made to agree, one of the inspectors shall publicly announce in a loud voice the number of ballots deposited in the box as shown by the poll lists. The inspectors of election shall then immediately proceed to count the ballots.

Counting ballots.

Poll clerks.

SEC. 20. When the canvass of the ballots found in the box shall have been completed and the poll clerk shall have announced to the inspector the total number of votes received by each candidate, the chairman of the board of inspectors of election, or in his absence the inspector acting as such, shall proclaim in a loud voice the total number of votes received by each of the persons voted for upon the ballots found in the box, and the office for which they are designated, and such proclamation shall be *prima facie* evidence of the result (*a*) of the canvass of such ballots. And after the ballots shall have been counted as aforesaid, and the certificates duly made out, the said ballots shall then be immediately destroyed unless any of the said ballots shall be disputed or rejected, in which case the said disputed or rejected ballots shall be placed with the said certificates in an envelope and sent to the Department of Elections.

Proclamation of result by inspectors.

Ballots when to be destroyed.

Disputed ballots to be placed in boxes with certificates.

(*a*) *By the Court*: " * the Court considers that when the *result* of it" (election) "is ascertained and announced at the close of it, it is final and conclusive on the officers of the election, and cannot afterwards be reconsidered or varied by them," &c.
State ex rel Wright vs. Warren, 1 Houst. 39 at 44. (yr. 1855)
Knight & Kennedy vs. Ferris, 6 Houst. 283 at 328. (yr. 1881)

Triplicate statements of results.

Form of and what to contain.

Certificates.

By whom subscribed.

When not subscribed.

reasons to be stated in writing, etc.

Statements.

Enclosure of.

Endorsement of.

Delivery of.

Tallies.

Envelopes to have endorsement as to contents.

Delivery of statements, etc., to Department of Elections, where to be made and to whom.

Tally list, delivery of.

SEC. 21. The inspectors of each election district shall make triplicate statements of the result of the canvass and estimate of the votes. Each of the statements shall contain a caption stating the day on which such election was held, the number of the election district in relation to which such statement shall be made, and the time of opening and closing the polls of such election district. It shall also contain a statement showing the whole number of votes given for each person, designating the office for which they were given, which statement shall be written or partly written and partly printed, in words at length, and at the end thereof a certificate that such statement is correct in all respects, which certificates and each sheet of paper forming part of the statement shall be subscribed by the said inspectors and poll clerks. If any inspector or poll clerk shall decline to sign any return, he shall state his reason therefor in writing, and a copy thereof signed by him, shall be enclosed with each return. Each of the statements shall be enclosed in an envelope, which shall then be securely sealed with wax, and each of the inspectors and each of the poll clerks, shall write his name across every fold at which the envelope, if unfastened, could be opened and across the seal thereon. One of the envelopes shall be directed on the outside to the Clerk of the City Council of Wilmington, another to the Mayor and the third to the Department of Elections. Each set of tallies shall also be enclosed, securely sealed and signed in like manner, and one of the envelopes shall be directed on the outside to the Department of Elections, and the other to the Clerk of the City Council of Wilmington. On the outside of every envelope shall be endorsed whether it contains the statement or the tallies and for what election district.

SEC. 22. At or before the hour of ten o'clock in the forenoon, on the first Monday after the city election, one of the said inspectors in each election district shall deliver to the Department of Elections, at its office, the statement directed to it; another inspector shall deliver to the Clerk of the City Council the statement directed to him, and the third inspector shall deliver to the Mayor the statement directed to him. One of the poll clerks shall deliver to the Department of Elections

Duty of the Department of Elections and Clerk of Council to be present to receive.

the tally directed to it, and the other poll clerk shall deliver to the Clerk of the City Council the tally directed to him. And it shall be the duty of the Department of Elections, and its clerk, and of the Clerk of the City Council, and of the Mayor to be present in their respective offices from the time of closing polls until twelve o'clock midnight of the day of the election, and from the hour of eight o'clock to the hour of ten o'clock in the forenoon of the first Monday after the election. In case, for any cause, the Clerk of the Council shall fail to attend at such time and place, the President of Council shall attend and receive, take charge of and safely keep said statements and tallies until delivered to the Clerk of Council, or to the Council at their next stated meeting; and if, for any cause, the Mayor shall fail to attend at such time and place, the statement shall be delivered to the City Judge of the Municipal Court for the City of Wilmington at the City Hall, who shall take charge of and safely keep said statements until delivered to the Mayor.

President of Council.

Attendance of the Mayor.

City Judge.

Poll list, how certified and filed.

SEC. 23. The poll lists kept at such election shall be certified in writing by both poll clerks to be a true and correct list of the votes cast at the said election in their respective election districts, and at or before the hour of ten o'clock in the forenoon of the first Monday after the city election shall be filed by such poll clerks, the one in the office of the Department of Elections and the other in the office of the Clerk of the City Council of Wilmington.

When filed with other persons designated for the purpose.

SEC. 24. In case any officer to whom any of the papers in the preceding section are directed to be delivered shall be absent from his office, the same may be delivered to the person authorized in such case to attend to his official duties, and the officer or person to whom any envelope containing any statement or tally, or to whom any register or copy thereof or poll lists shall be delivered, as in this Act provided, shall give a receipt therefor to the inspector or poll clerk from whom the same is received, and such receipt shall be filed by said inspector or poll clerk in the office of the City Auditor of the City of Wilmington before any payment for his services shall be made.

Receipts therefor to be filed with City Auditor.

Canvass by Department of Elections, when made.

Manner of.

Certificates of result of election to whom delivered.

Duty of Mayor and Clerk of Council.

Certificates for persons elected.

SEC. 25. The members of the Department of Elections shall, on the first Monday following each city election, at the hour of twelve o'clock noon, meet in public session at the City Hall in said City of Wilmington and canvass, (a) declare and certify the result of such election. The envelopes delivered to said Department of Elections, as provided by this Act, shall then and not till then, be opened by the presiding officer of said department at such session, who shall mark each separate sheet of the statement with the initials of his name and proclaim and declare the persons elected, and before adjourning the members of said department shall make two certificates in writing, under their hands or the hands of a majority of them, showing the state of the vote for Mayor, President of Council, Members of Council, Assessors and Collectors, City Treasurer and for any and other city officers, for whom votes shall have been cast (when they or any and all of them shall have been voted for according to law) setting forth particularly the name of every person voted for for said offices respectively, and the number of votes cast for each, and shall seal up each of said certificates separately in a paper with an endorsement thereon describing the certificate enclosed; and the president, or other presiding officer of the Department of Elections, shall either personally or by person deputed by him, on the first Tuesday following the election as aforesaid, between the hours of ten o'clock in the forenoon and twelve o'clock noon, deliver and lodge one of said certificates in the office of the Clerk of the City Council of Wilmington and the other in the office of the Mayor of said city, and it shall be the duty of the Clerk of said Council and the Mayor of said city, each either in person or by deputy, to be present in their said offices respectively at such time to receive the same. It shall also be the duty of the Department of Elections or a majority of the members thereof, before the adjournment of said public session, on the first Monday following each city election, to make a certificate in writing, signed by them for each person who has been proclaimed and declared to be elected at said election, which certificate shall be in the following form, viz:

Form.

Wilmington, Del., June ————, 19

To ————

The undersigned, members of the Department of Elections, do hereby certify that you have been duly proclaimed and declared by said department to have been elected, at the city election held on the ———— day of ———— 19—, to the office of ————. Said department shall forthwith cause said certificate either to be delivered personally to the person so proclaimed and declared to have been elected or to be mailed to his usual postoffic address. Said certificate shall be prima facie evidence of the right of the person to whom it is addressed to hold the office therein mentioned. (b)

Delivery.

Effect.

(a) *Lore, C. J.*: "The Board of Canvass is a convenient legal medium of bringing to one common point, the votes of the scattered election districts; of ascertaining the aggregate result thereof, and of certifying the result so ascertained for the persons so apparently elected. * * The Board of Canvass" has "power only to ascertain and certify the vote actually cast at the election, and" has "no right to determine whether they were legal or illegal votes, or whether the election was regularly held or not. In other words, the Board" has "no right to go behind the certificates of the returns of the judges of election. * * "Their duties are ministerial, and they are invested with no judicial power that would enable them to pass upon the qualifications of voters, or the regularity of the election."

State ex rel Allee et al vs. McCoy et al, 2 Marv. 465 at 533. (yr. 1896)

McCoy et al vs. State ex rel Allee et al, 2 Marv. 543 at 561. (yr. 1896)

Knight & Kennedy vs. Ferris, 6 Houst. 283 at 328. (yr. 1881)

(b) This provision expressly provides for the giving of certificates, but if the law did not so provide, it would not matter.

By the Court: "Although no certificate, or other formal mode of making known to a person his election to * * any * public office, may be prescribed or required by law, the Court considers that when the result of it is ascertained and announced, at the close of it, it is final and conclusive on the officers of the election, and cannot afterwards be re-considered or varied by them."

State ex rel Wright vs. Warren, 1 Houst. 39 at 44. (yr. 1855).

Sec. 26. And the Council of said city, at its meeting for organization on the first day of July next ensuing the city election, or if that day falls on a Sunday, then on the Monday following, shall examine the certificates so delivered to the Clerk of City Council as aforesaid, and if there be no choice for Mayor, President of Council, City Treasurer, Assessor and Collector, or for Member of Council in any of the wards, or any other city officer for whom votes shall have been cast, by

Council to examine certificates.

reason of two or more candidates having an equal and the highest number of votes for any of said offices, the Council shall proceed to elect one of said candidates for such office for which he is a candidate. When Council may elect.

Sec. 27. If any candidate for any of the offices before mentioned shall choose to contest the right of any person claiming to have been elected to such office, such candidate shall, within thirty days next after such election, cause to be presented to the said Council of Wilmington, his petition in writing, setting forth particularly the grounds and specifications upon which said election is contested, together with an affidavit that such petition is not for the purpose of vexation and delay but that he does verily believe that he has just grounds for contesting such election, and shall also at the same time cause to be delivered to the person whose election is contested a true copy of said petition. Upon the filing of such petition and affidavit, the Council (a) shall appoint a day, not less than ten nor more than fifteen days from the time of filing such petition and affidavit, for hearing and determining the same, giving public notice thereof in two newspapers published in the City of Wilmington, if so many be published at that time, and upon the day appointed for such a hearing the said City Council shall sit in the City Hall, in the presence of such citizens and others as may choose to be present, shall hear the allegations and proofs of the party, and shall determine according to the very right of the matter. Evidence shall be confined to the grounds and specifications set forth in the petition. The Council shall have power to issue subpoenas, signed by the President of Council for the time being and attested by the Clerk, for persons and papers, including all poll lists, tally lists, statements and certificates delivered to the Department of Elections, Clerk of Council, Mayor of the City, or any of them, to administer oaths and affirmations, to examine witnesses, and to do all other things requisite to arrive at a full and perfect knowledge as to the right of the case. The decision of the Council, signed by its officers, shall be published in two newspapers printed in the City of Wilmington, if so

Contests.

Proceedings.

Petition.

Affidavit.

Council to fix time for hearing.

Public notice.

Hearing.

Subpoenas.

Papers.

Decision of Council to be published, and shall be final.

many be published at that time, and shall be final and conclusive. (*b*)

(*a*) The Court decided in the case below cited, that the new, or incoming Council, and not the old, or retiring one, was the Council to pass upon the contest, &c.
Willis vs. Ross. (yr. 1906)
See Sec. 30, "b" of the Charter.

(*b*) The declaration that the decision of "The Council" shall be "final and conclusive," means only where "The Council" acts honestly and within the law. If it acts outside the law, its illegal action may be reached and reversed by mandamus and certiorari.
See Sec. 30, "b" of the Charter.

This Act not to affect elections for Board of Public Education.

SEC. 28. That nothing in this Act shall be construed to relate to or affect any elections for members of "The Board of Public Education" in Wilmington.

Passed at Dover April 6, 1893.

CHAPTER 397.

OF THE GENERAL ELECTION.

AN ACT to amend an act entitled "An Act to further provide for the Secrecy and Purity of the Ballot."

This Act applies to municipal elections of Wilmington. 20 D. L. 407.

SECTION 1. That the provisions of an act entitled "An act to further provide for the secrecy and purity of the ballot," passed at Dover, May 20, A. D. 1897, * * * * * shall apply to all municipal elections to be thereafter held in said city. (*a*)

Passed at Dover, May 27, 1897.

(*a*) This is the manner in which all Acts should be drawn if it is intended that they should apply to municipalities, for the general doctrine is, that constitutional provisions, and general statutes, do not apply to cities unless the intent is clear.
Layton, Justice: "The election laws refer to State elections and State officers," &c.
State vs. Wil. City Council, 3 Har. 294 at 310. (yr. 1840)
See Sec. 14, "c" of the Charter.

AN ACT to Authorize the Submission to the People of Wilmington of Question of Public Policy in Connection with the Affairs of the said City. 24 D. L. 154.

Initiative and referendum for Wilmington.

SECTION 1. On application addressed to the Mayor and Council of Wilmington, signed by citizens of the City of Wilmington, qualified to vote at the last preceding election for the Mayor of the said city, aggregating in number not less than ten per centum of the whole number of votes cast at such election for such Mayor, asking for the submission to the people of the said city of any question relating to the affairs of the said city, for an expression of opinion thereon, such question shall be placed before the people at the next city election. Every person signing any such application shall put or have put after his signature the designation of the election district in the said city in which he was qualified to vote at the last preceding election for Mayor of said city.

Percentum of votes required.

Application filed when and where.

SEC. 2. Such application shall be filed with the Mayor at least sixty days before the election at which such question is to be submitted, and the persons signing such applications shall be considered prima facie as citizens qualified to vote at the last preceding election for the Mayor of said city.

Mayor, duty of.

SEC. 3. It shall be the duty of the said Mayor, not less than twenty days before the city election at which the said questions are to be submitted, to transmit the same to the persons who may then have the duty of preparing ballots for the said election; and it shall be the duty of such persons to prepare separate ballots to be used at the said election, containing the question so to be submitted as aforesaid, with the words "yes" and "no" printed at the foot of such ballot; that is to say, following the question to be voted upon as it appears upon the ballot, the words "yes" and "no" shall appear in the following form:

Ballots, form of.

Yes..... No.....

How marked.

Any person qualified to vote at such city election may cast a vote in favor of such question by placing a cross opposite the

word "yes" and any such person desiring to vote against the same may do so by placing a cross opposite the word "no."

How canvassed and returned.

SEC. 4. The said ballots shall be prepared, counted, canvassed and returned in the same way as provided by law in relation to ballots cast at the said city election.

Separate ballot boxes.

SEC. 5. It shall be the duty of the persons so required by law to furnish ballot boxes to be used at the city election, to furnish a separate ballot box for each election district in said city, in which separate ballot box the ballots herein provided for shall be cast, and the said ballots shall not be commingled with the other ballots used at such city election.

Election officers, duty of.

SEC. 6. It shall be the duty of the election officers in each election district in the said city to count the said ballots after the same have been cast, and to make return thereof in all respects as provided by law in relation to ballots cast at the said city election, provided, however, that the number of ballots cast for or against the said question shall be entered upon separate sheets to be furnished for that purpose. Certificates showing the result of the said vote, shall be made in the manner as now provided by law in relation to certificates of the vote cast at the city election, which certificates shall be certified, returned and delivered in all respects as now provided by law in relation to the city election.

Certificates of results.

Expenses to be paid by city.

SEC. 7. The expense of printing said ballots, procuring ballot boxes, and all expenses connected with the taking of the said vote shall be borne as is provided in relation to other expenses incurred at the said city election.

Approval of any measure submitted by electors, duty of City Council, &c.

SEC. 8. Should any question submitted to the qualified electors of the City of Wilmington, as provided in this Act, receive a majority of the votes cast thereon at the said election, and the subject be within the corporate powers of the said Mayor and Council of Wilmington, or of any department or branch thereof, then it shall be the duty of the City Council, or of any commission or any other official or officials of the City of Wilmington having jurisdiction therein, to adopt,

without unnecessary delay, such ordinances, (a) rules or regulations as may be necessary for putting into effect the popular will thus expressed. The failure of any member of such City Council or Commission, or of any official of said city to perform any duty herein imposed upon him, or the obstruction, hinderance, or delay by him of the adoption of any ordinance, rule or regulation as herein provided for, shall be deemed a misdemeanor and be punishable by a fine at the discretion of the trial court.

Penalty for failure to do duty imposed.

(a) This section prescribes that after the people have voted upon questions submitted to them, it shall be the duty of the Council to "adopt * * ordinances * * for putting into effect the popular will thus expressed." And the failure of a member of the Council to do so, &c., "shall be deemed a misdemeanor," &c.

This provision simply makes a puppet of "The Council." It robs it of all discretion and judgment, and forces it, whether it thinks it wise or unwise so to do, to pass the ordinance desired. It is, therefore, clearly a case of the *people* at the polls, (not "The Council") deciding the matter, and *enacting legislation.* And this cannot be done, as the Legislature cannot delegate its legislative powers to the people, unless the Constitution be first changed to that effect. In August, 1907, "The Council" "passed" an ordinance requiring the assessors and collectors of taxes to give bonds with surety companies, instead of freehold bonds as prescribed by the Charter. The case was taken to Court, and the Court decided the Charter provision could not be thus repealed. This case, known as the Sayers case, is cited at the foot of this note. In the case of Rice vs. Foster, 4 Har. 479. (yr. 1847) the Court said:

Booth, C. J.: "The legislative, executive and judicial powers compose the sovereign power of a State. * * Having thus transferred the sovereign power, the people cannot resume or exercise any portion of it. * * It is equally clear that neither the legislative, executive, nor judicial departments, separately, nor all combined, can devolve on the people, the exercise of any part of the sovereign power, with which each is invested * * and in no case whatever can they be transferred or delegated to any other body or persons; not even to the whole people of the State, and still less to the people of a county. * * If the legislative functions can be transferred or delegated to the people, so can the executive or judicial power," p. 488-9. In a later case, the Court said:

Harrington, C. J.: "The judgment in Rice vs. Foster, imposed no limit on legislative power, as existing in the General Assembly. It only denied the right to delegate that power, to be exercised by a direct vote of the people themselves; a principle which has since been recognized, we believe, *wherever* it has been judicially considered."

State vs. Allmond, 2 Houst. 612 at 639. (yr. 1863)

In the Fountain case, below cited, the Court said:

Pennewill, J.: "Reference has been made in the argument to the case of Rice vs. Foster, 4 Harr, 479, in which it was held that the Local Option Act of 1847 was, under the Constitution then in force, an unconstitutional exercise of legislative power. The decisions in that case made it impossible for the Legislature to pass any valid law authorizing the *people* to decide by ballot whether the manufacture and

sale of intoxicating liquors should be licensed or prohibited, and such condition necessarily continued until there was a change in the fundamental law,'' &c., meaning a change in the Constitution.

State vs. Fountain, 6 Penn. 520 at 527. (yr. 1908)

As to what duty, if any, one owes to such so called ''laws,'' i. e., where the legislative power has been delegated to the people, and the people have voted upon questions thus submitted to them, the Court said:

Harrington, C. J.: —''the delegation of such power is unauthorized and invalid, and the execution of it is not an act of legislation, but of usurpation, which the citizen is not obliged, and the other *departments of government are not at liberty to obey.*''

Rice vs. Foster, 4 Har. 479 at 503. (yr. 1847)

The case below cited, (it being the same one above mentioned, in regard to surety bonds,) makes the said act worthless, as all ordinances passed pursuant to it, would be void, as was the one in the Sayers case.

State Del. ex rel The Mayor and Council of Wil. vs. Sayers. (yr. 1907). App. Dock. p. 425.

See Sec. 97, ''a'' of the Charter.

Conviction to operate as ouster from office.

Conviction of such an offense shall operate to remove the person so convicted from any municipal office he then holds, and render him ineligible to hold any position as an official or employee of the City of Wilmington for a period of five years from the date of such conviction.

Approved March 9, A. D. 1907.

CHAPTER XII.

ACTS IN RELATION TO PUBLIC SCHOOLS.

		Page
1.	Act to Provide for the Organization and Control of the Public Schools of the City of Wilmington.....	419
2.	Act Vesting Title to Certain Schools in Board of Education	438
3.	Act to Compel the Attendance of Children at Public Schools	439
4.	Act Providing Graded School Facilities for the Children of this State. Provisions Applying to Wilmington	445
5.	Act Requiring the Constitution of the State to be Taught and Explained in Schools	450
6.	Act to Provide for the Purchase and Display of U. S. Flags on School Buildings	450
7.	Act Authorizing the Board of Education to Borrow $160,000 for Erecting and Equipping School Houses in Wilmington	451

AN ACT to provide for the organization and control of the Public Schools of the City of Wilmington. 23 D. L. 140.

SECTION 1. That the City of Wilmington with the territory within its limits, or which in the future may be included by additions thereto, shall be and constitute a consolidated school district, and the supervision and government of public schools and public school property therein shall be vested in a board of thirteen members, to be called and known as the "Board of Public Education in Wilmington." Said Board of Education as hereinafter constituted, is hereby created a corporation, (*a*) having perpetual existence and succession, and by and in said name shall have power to purchase, lease, receive, hold and sell property, real and personal, sue and be sued (*b*) and to do all things necessary to accomplish the purposes for which such school district is organized, and shall succeed to and be vested with, and be seized and possessed of all the privileges and property of whatever kind or nature granted or belonging to any previous school corporation, or Board of Education, or

City of Wilmington consolidated school district.

Board of Education.

Incorporated.

Powers.

school districts in the City of Wilmington and said territory, or officers thereof authorized or empowered by an enactment of the General Assembly of the State to do anything in reference to public education, or to hold any of said property.

(*a*) Note that the "Board of Public Education in Wilmington" is a *corporation.* The Street and Sewer Department, the Water Department, and the other departments of the city, are simply *agencies* of the city,—agencies of "The Mayor and Council of Wilmington."

(*b*) For the meaning of these powers, see Sec. 2, "a," "b," "c" and "d." of the Charter.

Powers and duties.

SEC. 2. The Board of Education in Wilmington shall have general and supervising control, government and management of all the public schools and all public school property of the city; shall exercise generally all powers in the administration of the public school system therein, appoint such officers, agents and employees as it may deem necessary and fix compensation; shall have power to fix the time of its meetings, to make, amend and repeal rules (*a*) and by-laws for its meetings and proceedings, for the government, regulation and management of the public schools and school property of the city, and for the transaction of its business. The said board also shall have power:

(*a*) "Rules" must be general in their application. For the legal meaning of the word, see Sec. 76, "a" of the Charter, and the case of Morris et al vs. Pilot Coms., 7 Del. Ch. 176. (yr. 1894)

Kindergartens.

1. To establish kindergartens, elementary schools, one or more high schools, manual training schools, or classes, evening school, special and truant schools, training schools or classes for teachers, and to discontinue or consolidate any of such schools.

Grades.

2. To establish or change the grades of all schools and to adopt and modify courses of study therefor.

Of teachers and their qualifications, salary, etc.

3. To fix a standard of minimum qualifications as a necessary requirement for the service of all superintendents, principals and teachers, (*a*) to fix their salaries, and to dismiss them at any time for incompetency, neglect of duty or immorality; after an impartial hearing of charges to prescribe and enforce

such rules and conditions as it may deem proper for the admission, suspension or expulsion of pupils of said school. Admission, etc., of pupils.

(*a*) As to employing, &c., teachers, see
Smith vs. School Dist. 1 Penn. 401. (yr. 1898), and
Hitchens vs. School Dist., 5 Penn. 325. (yr. 1905)

4. To purchase, lease or improve land and sites for school houses and school purposes; to build, purchase, lease, enlarge, improve, alter and repair school houses and their appurtenances; to purchase, improve, exchange and repair school apparatus, books, furniture and appendages; to procure fuel and defray the contingent expenses of schools under its control; to pay the salaries and wages of all officers, principals, teachers and employees of said Board of Education. School building and equipment thereof. Salaries.

5. To appoint as herein provided:

1. A Secretary of the Board of Education, who will serve during the pleasure of the Board. Secretary.

2. A Superintendent of Public Schools who shall serve during the pleasure of the Board. The Board may from time to time appoint one or more persons to assist the Superintendent in the discharge of his duties. Superintendent and assistant.

6. The Board of Public Education shall have power to enact rules (*a*) and regulations for the proper execution of all duties devolved or devolving upon said Board, its members and committees; for the transaction of all business pertaining to the same; for defining the duties of all its officers, clerks, superintendent, principals, teachers, subordinates and employees; for regulating the manner of making disbursements from any of the funds appropriated for school purposes; for the execution of all powers vested in it by law, and for the promotion of the welfare and best interests of the public schools and public school system of the city.[1] Rules and regulations.

(*a*) See Sec. 2, "a" of this Act as to the meaning of the word "rules."

1: See Sec. 16, 21 D. L. p. 185 as to certain duties of each Board of Education of incorporated school districts as to flags, maps of the U. S. and the State of Delaware, the teaching of physiology and hygiene, and the effects of alcoholic drinks and narcotics upon the human system, and the teaching of the Constitutions of the U. S. and the State of Delaware, when instruction is given in U. S. history. See also 20 D. L. p. 22 as to U. S. flag. (See p. 450 this volume as to Act.) See also 24 D. L. p. 222 where the Constitution of the State of Delaware is required to be taught and explained to the scholars of each and every one of the public schools of the State. (See p. 450 of this volume for the Act.)

Board of Education, number.

SEC. 3. On and after the thirtieth day of June, 1905, the Board of Education in Wilmington shall be composed of thirteen members, one of whom shall be elected from each of the wards of the said city by the electors residing (a) in each ward respectively, and the remaining member who shall be the President, shall be elected by the electors of the city at large. At the city election for members of the Board of Education to be held on the second Saturday in June, 1905, one member of said Board shall be elected from the residents in each of said wards by the electors residing in each ward respectively. Members from the First, Third, Fifth, Seventh, Ninth and Eleventh wards shall be elected for the term of two (2) years; those from the Second, Fourth, Sixth, Eighth, Tenth and Twelfth wards for the term of four (4) years. The President shall be elected for the term of four (4) years. Their terms of office shall commence on the thirtieth day of June, 1905, at 12 o'clock noon. At an election to be held biennially on the second Saturday of June in the City of Wilmington next preceding the expiration of the terms of any of the said members of the Board of Education their successors shall be elected for a term of four years each. Removal of any member of said Board from the ward from which such member was elected shall create a vacancy in his office. In case a vacancy shall occur in the office of a member of the Board of Education for any cause, the remaining members of said Board shall fill such vacancy by the appointment of a suitable person from the ward where such vacancy occurs, qualified by law to be elected thereto; and the person so appointed shall hold office by virtue of such appointment, until the thirtieth day of June following the next succeeding biennial school election, at which election a member shall be elected, as provided in this Act, for the unexpired term. In case a vacancy shall occur in the office of the President, the Board shall fill such vacancy by the appointment of one of its members qualified by law to be elected thereto; and the person so appointed shall hold said office of President by virtue of such appointment until the thirtieth day of June following the next and succeeding biennial school elec-

President, how chosen.

When to be elected.

Terms.

Vacancy.

How to be filled.

Term of appointee.

Vacancy of President, how filled.

Term of appointee.

tion, at which election a new President shall be elected, as provided in this Act.

(*a*) Residence is a question of intent, or rather of act and intent combined. See Sec. 11, "b," p. 405 of this volume.

Qualification of members.

SEC. 4. The members of the Board of Education shall be at least twenty-five years of age, and shall have been residents (*a*) of the City of Wilmington for at least three years immediately preceding their election; said members shall have been bona fide free holders in said city for at least one month before their election, and must be qualified to vote at school elections. They shall be ineligible to any elective or appointive office under such Board of Education while holding membership in said Board. They shall not be interested either directly or indirectly in any contract with or claim against the said "Board of Public Education in Wilmington." If at any time after the election of any member of said Board, he shall become interested in any such contract with or claim against said Board, he shall thereupon be disqualified to continue as a member of said Board, and a vacancy shall thereby be created. Every member of said Board shall, before assuming the duties of his office, take an oath or affirmation before some one qualified to administer oaths, that he possesses all the qualifications required by this Act, that he will honestly and faithfully discharge the duties of his office, that he will not, while serving as a member of said Board, become interested, directly or indirectly, in any contract with or claim against said Board, and that he will not be influenced, during his term of office, by any political or sectarian considerations, or by anything except that of merit and fitness in the appointment of officers and the engagement of employees, and that he is a bona fide resident of the ward from which elected. No compensation shall be received by members of the Board; but they shall be exempt from jury duty during their term of office. Each member, before entering upon office shall take the following oath or affirmation: I, , do solemnly swear (or affirm) that I have been a bona fide freeholder in the City of Wilmington for the period of one month prior to my election, and a qualified voter in the ward for which I am chosen a member of the Board of Public Education in Wilmington; that I will

Ineligible to what offices.

Interest in contract disqualifies.

Oath.

Compensation.

Form of oath.

diligently and faithfully perform the duties of a member of said Board according to the best of my knowledge and judgment; and that I will not be controlled in any vote or action as a member of said Board from political or partisan considerations. Such oath or affirmation may be administered by the President, Secretary, or any member of the Board as well as by any officer by law authorized to administer oaths or affirmation.

By whom to be administered.

(*a*) As to the legal meaning of "residents," see Sec. 3, "a" of this Act.

Removal of member for what reasons.

The Board may remove any of its members upon proof, either of official misconduct in office, or of negligence of official duties, or of conduct in any manner connected with his official duties which would tend to bring discredit to his office or the school system, or of mental or physical inability to perform his duties as a member of said Board; but before such removal of said member, he shall receive due and timely notice in writing of the charges against him, and a copy thereof, and shall be entitled to a hearing before said Board, and to the assistance of counsel at said hearing.

Notice of charges.

Hearing.

Elections, how held.

SEC. 5. Elections for said Board shall be held under the provisions of the general laws (*a*) governing city elections, so far as they are consistent with the provisions of this Act. Not later than fifteen days before any election for members of the Board of Education provided for in this Act, electors qualified under the provisions of this Act may present names of candidates for election as members of said Board of Education to a board of canvassers, consisting of the President of the Board of Education, the Mayor, the Treasurer and the City Solicitor of the city, in the manner following: Each candidate shall be proposed in writing by not fewer than twenty-five of said qualified electors. No more than one candidate may be named in any one petition, and no person may sign more than one petition for any one election. Candidates for election in each of the wards must be proposed by qualified electors residing in the respective wards. The candidate for election for President from the city at large, may be proposed by qualified electors resident in any part of the city. Said proposition or pe-

Manner of naming candidates.

Manner of nominating.

titions nominating candidates for said Board of Education shall be filed with the Secretary of said Board, who shall be ex-officio the Secretary of the said board of canvassers. Upon the presentation of such petitions to the board of canvassers, the said board of canvassers shall publish at the expense of the said Board of Public Education for five secular days next preceding said school elections, and the names so proposed, in at least two daily newspapers of the city, and shall certify at the time required by law such nominations to the Department of Elections for said city. Said Department of Elections shall prepare ballots in form as hereinfter directed printed on plain paper, at the expense of the said Board of Public Education, containing the names of all such candidates, arranged in an order to be determined according to lot by said board of canvassers. Ballots to be used at such school elections shall contain the words "School Election in First ward and likewise for each of the other wards," the date of holding said election, the names of the candidates arranged in so many groups as may be necessary so that there may be appropriate designations and directions at the head of each group showing the terms for which the persons therein were nominated, whether they are nominees for such ward or for the city at large, and the number of persons who may be voted for in each group. The electors shall designate their choice of candidates to be voted for in each of such groups by drawing a line through the names of all persons in each group, except those candidates in each group desired to be voted for by them. Defective designation of an elector's choice in one or more of such groups of candidates shall not invalidate said ballot so far as there shall appear to be a proper designation of choice in any other of said groups of candidates. Such ballots shall be voted at said special election and deposited in a ballot box provided by the said Department of Elections for such purpose. The name of any candidate shall not be thus published and placed on the official ballot by said board of canvassers if it shall appear that he is ineligible for membership on the said Board of Education under the provisions of Section 4 of this Act. The candidate or candidates to be elected from each School Election District receiving the plurality of votes from

Petitions of nomination filed with whom.

Names published in two newspapers.

Ballots, how prepared.

Form of ballots.

Electors, how to vote.

Ballots, how voted.

What candidate's name not published.

Plurality of votes determine.

such district, and the candidate or candidates to be elected from the city at large receiving the plurality of votes for the city at large shall be declared elected. If at any election a member is to be chosen to fill a vacancy and to serve out an unexpired term, candidates may be chosen as above provided.

(*a*) Under a similar provision, whereby portions of the general election law were incorporated in the Board of Education Election, the Court held that the provision, in the general election law, relating to assaults and batteries on election officers, was applicable in cases of assaults and batteries on election officers holding the Board of Education election, and that, in such cases, the Municipal Court, and not the Court of General Sessions, had exclusive jurisdiction.

State vs. Anderson, I Marv. 526 at 527. (yr. 1893)

See Sec. 47, "a," p. 299 of this volume.

Qualifications of electors.

SEC. 6. Said members of the Board of Education shall be chosen by ballot in manner and form hereinbefore provided by the residents of the city who shall have been qualified to vote at the last preceding city election.

Proviso.

Female inhabitant, when may vote.

Provided that every female inhabitant of said city who is of the age of twenty-one years (*a*) and upwards, and has resided (*b*) within said city for three months next preceding the election for members of the Board of Public Education in Wilmington, and in the ward where she offers to vote for at least one month next preceding said election, and who shall also be a bona fide freeholder within said city and shall have been assessed for and paid a school tax for the City of Wilmington for the preceding year, shall be entitled to vote for members of said Board. In the absence of objection or challenge, the production of a receipt for said school tax shall be prima facie evidence of the right of said female inhabitant to vote at said school election. In case of objection to or challenge of said female voter, the inspector of said election shall cause said female voter offering to vote at said election to take the following oath:

Tax receipt prima facie evidence of right to vote.

Challenge.

Oath of female when challenged.

I, do swear (or affirm) that I am of the age of twenty-one years or upwards, and have resided within the City of Wilmington for three months last past, and in the ward where I now offer to vote for at least one month last past.

(*a*) One is of the age of 21 years the day *before* the anniversary of his birthday.

See Sec. 11, "a," p. 404 of this volume.

(*b*) See Sec. 3, "a" of this Act, as to "residence."

The taking of said oath shall not relieve said female inhabitant offering to vote as aforesaid from the production at said election of the receipt for said school tax as aforesaid.

Female inhabitant right to vote.

Every female inhabitant of said city possessing the requirements above specified, shall be qualified to vote at all elections for members of said Board, and if 25 years of age or upwards, shall also be eligible for membership in said Board.

Eligible to membership in Board.

City Councilmen ineligible to Board.

Place of election fixed by Board.

Notice.

No member of City Council shall be a member of the Board of Public Education. The Board of Education shall appoint a place or places for holding the school election in each ward, and give notice thereof in two or more newspapers published in the City of Wilmington for ten days previous to the time of holding said election, and shall also give at least four days' notice thereof by hand bills, under the name of the Secretary of the Board, posted in four or more of the most public places in each ward. The Department of Elections of the City of Wilmington shall, at the request of said Board, appoint three men as inspectors for each polling place designated as aforesaid, whose duty it shall be to hold said election and judge of the qualifications of voters, and otherwise conform to the requirements of law in that behalf. The three inspectors thus appointed for any polling place shall be from among those persons who at the last preceding city election acted as inspectors within the ward in which they are appointed to hold the school election, and they shall not all be of the same political faith. Two of said inspectors may act as clerks, and as a part of their duties shall keep a list of the names and residences of electors who shall have voted at each polling place. The election of members of the Board shall be held on the second Saturday in June in the year nineteen hundred and five, and at the same time in every second year thereafter. Said election shall be held in the afternoon, the polls being opened at twelve o'clock or within thirty minutes thereafter, and closed at six o'clock. If the inspectors appointed and directed as aforesaid to hold said election shall refuse to serve or are not at the place of election at the time of opening the polls, the voters present, shall by plurality, without ballot, choose an officer or officers for holding the election in the place of the

Officers of election.

Minority party represented.

Time of election.

Polls, when opened.

Absence of election officers at opening of polls, how filled.

one or more so refusing or not present. The officers holding the election shall, before opening the election, each take an oath or affirmation as follows:

Oath of election officers.

I, , do solemnly swear (or affirm) that in holding the election this day for members of the Board of Public Education in Wilmington, I will faithfully discharge my duty and make true certificates thereof and deliver the same according to law, so help me God (or, I solemnly affirm).

Organization of election officers.

The inspectors appointed or chosen as aforesaid to hold said election shall meet at the polling places to which they are allotted, and shall organize as a Board by selecting one of their number to act as chairman, but in case of failure to so organize within fifteen minutes after the time fixed for meeting, the chairman shall be selected by lot. The inspector selected as chairman is authorized to administer the oath or affirmation hereinbefore provided to the other inspectors and either of them or to each other.

Chairman.

Voter challenged.

Any person applying to vote for members of said Board may, on any day of election, be challenged by any qualified voter of the City of Wilmington; and any one of the inspectors of election at the polling place where said person is challenged may, at any such time or times, and one of them shall, administer to any male person challenged the following oath or affirmation:

Oath to challenged voter.

You do swear (or affirm) that you will fully and truly answer such questions as shall be asked you touching your qualifications as an elector, so help me God (or so you solemnly affirm).

When voter may be refused.

Any person who may be offered as a witness to prove the qualifications of any person so claiming the right to vote, shall also be sworn or affirmed in like manner. Any person refusing to take such an oath or affirmation, if so required, or refusing to answer such questions as may be asked touching his qualifications as an elector, shall not be permitted to vote. If any person, male or female, taking an oath or affirmation provided for in this section, shall swear falsely, he shall be deemed guilty of perjury, and upon conviction, shall be punished by

Perjury.

fine or imprisonment, or both, at the discretion of the trial court.

Department of Elections, its duty.

It shall be the duty of the Department of Elections for the City of Wilmington, on or before the hour of 12 noon, on the day of the holding of any election for members of said Board provided for in this Act, to deliver at the places for holding of said elections so designated by the Board of Public Education in Wilmington, all books of registered voters used at the next preceding city election, (a) containing the names of residents within the voting district for which said polling place is designated as aforesaid. Said books of registered voters shall be used by the officers holding said school election to determine the qualifications of all males offering to vote at said election and who are qualified to vote at school elections, and at the close of the polls of said election, shall be forthwith returned to the said Department of Elections.

Books of registered voters.

(a) These "books" are makeshifts. The Clerk of the Peace, since 1897, without warrant of law, has been copying the names off the genuine books, used at the preceding general election, and on these *copies*, the city elections have been held. The consequence has been, that there has not been a valid city election since the new Constitution went into effect in 1897, and there will not be any until the law is amended, requiring the Clerk of the Peace to turn over to the Department of Elections the original and legal books used at the last general election, to be used at the municipal election following.

Returns of election.

The officers holding said election shall, upon the closing of the polls, forthwith proceed to count the votes for the several candidates voted for at said election, and shall prepare and severally sign duplicate returns of said votes upon blanks furnished said election officers by the said Board of Public Education in Wilmington. One of said duplicate returns shall, together with the ballots cast at said election, and the list of electors who shall have voted, be deposited in the ballot box, which box shall be thereupon securely sealed and retained in the exclusive custody of the chairman of the election officers of the respective polling places until the meeting of the Board of Canvass as hereinafter provided. The other certificate of said return shall be forthwith delivered to the Secretary of the said Board of Public Education in Wilmington.

To whom delivered.

Board of canvass.

That on the Monday following the holding of any city school election the chairman of the election officers of the respective polling places where said elections have been held as aforsaid, shall, at eleven o'clock in the forenoon, meet at the rooms of the Board of Public Education in Wilmington, where the meetings of said Board are usually held, and shall there produce the said ballot boxes, together with their contents, and shall proceed forthwith to canvass the returns of the vote for the candidates for said Board, using for the purpose of the said canvass and the determination of the votes cast for any candidate for said Board, the certificates of election returns theretofore deposited with the Secretary of said Board.

When ballot boxes may be opened.

When ballots to be recounted.

Recourse to the certificate of election returns remaining in the ballot boxes shall be had by said Board of Canvass (*a*) only in case of the absence, illegibility, defacement or alteration of the certificate theretofore deposited with the Secretary of said Board. Recourse to the ballots in any one said ballot boxes shall be had only in case of a sworn allegation of the fraudulent miscount or false certification by the election officers at any polling place of the ballots cast at such polling place.

(*a*) The duties of a Board of Canvass are ministerial. See Sec. 25, "a," p. 412 of this volume.

Certificates of results.

To whom delivered.

That upon the canvass of said vote, the members of said Board of Canvass, or a majority of them, shall then immediately make out a sufficient number of certificates (*a*) of the result of said election upon blanks to be furnished them by the said Board of Public Education in Wilmington, under their hands, and shall within two days thereafter, deliver one of said certificates to the Secretary of the said Board and one to each member elect.

(*a*) Certificates (in the absence of statute) are not essential. See Sec. 25, "b," p. 412 of this volume.

Board to organize when.

The said Board shall meet for organization on the thirtieth day of June immediately after said biennial election, or on the twenty-ninth of June should the thirtieth day of June

fall on Sunday; and it shall be the judge (a) of the election of its own members.

(a) The Board must keep within the law, and not act in bad faith, and unless it so does, its action will not be final.
See Sec. 30, "b" of the Charter.

That all and every of the acts and duties relative to the said school election imposed upon or vested in the said Board of Public Education in Wilmington, shall, so far as the first of said school elections to be held under this Act, be imposed upon and vested in the de facto (a) Board of Public Education in Wilmington in existence upon the approval of this Act. Duties relative to first school election voted in de facto Board.

(a) The Charter of the old Board of Education, at the time of the passage of this Act, had expired by limitation.

Said election officers shall be entitled to similar compensation and the expenses of the holding of said elections shall be paid by said Board of Education in a similar manner as is provided by law in the case of other city elections. Compensation of election officers.

SEC. 7. If any person not having the right to vote at any election held under this Act shall vote at such election, or if any person shall vote in a voting district in which he does not reside, or if any inspector or assistant shall knowingly take (a) the vote of a person not having a right to vote, or shall neglect or refuse to make and deliver certificates of any election as required by Section 6 of this Act, every such person, inspector, or assistant, shall be guilty of a misdemeanor, and upon conviction, shall forfeit and pay a fine of fifty dollars to be paid to the Board aforesaid for the benefit of the schools under their charge. Misdemeanor. Penalty.

(a) As to taking an illegal vote, knowing the person has no right to vote, see Sec. 36, "b," p. 294 of this volume.

SEC. 8. The Board of Education shall increase the number of schools and improve the condition thereof and do all acts necessary for establishing and maintaining said schools as they shall deem expedient and necessary until there are sufficient schools to accommodate all the children and minors residing in the City of Wilmington whose parents or guardians desire for them the benefit thereof; provided always, that the Board to increase school facilities.

Proviso, not to establish mixed schools.

schools for white children and minors shall be separate and distinct from the schools provided for colored children and minors. If there shall be accommodations in such schools in excess of what may be necessary for the seating and instruction of such resident pupils, the said Board may admit to any of such schools such number of non-resident pupils residing outside the city limits in the State of Delaware, as said Board may deem proper and upon such terms and conditions as said Board may from time to time prescribe.

When outside pupils may be admitted.

Quorum.

Officers.

President.

Secretary.

SEC. 9. Seven members shall form a quorum for the transaction of business. The officers of the Board shall be a President, who must be a member, a Secretary, and such other officers and agents as may be found necessary. The Board may appoint a person not a member of the same, Secretary thereof, prescribe his duties, require from him bonds with surety for his faithful performance of said duties, if deemed expedient, and allow him compensation for services by stated salary or otherwise, as may be considered proper.

Board in April make estimate of revenue and expenses.

Present same to City Council in May.

Estimate of construction of school houses.

Board in June to appropriate.

The Board shall, during the month of April in each year, cause to be prepared and laid before them estimates of their probable revenue and expenses for the ensuing fiscal year, which estimates they shall lay before the Council on or before the first stated meeting of Council in May following. At the time of presenting to Council said estimates of revenue and expenses the Board shall, if necessary, also in addition thereto, present to Council an estimate not to exceed Twenty Thousand dollars for the erection or extension of school houses and for furniture and heating apparatus for the same.[1] The said Board, early in June in each year, after the Council shall have made appropriation for the use of the public schools for the following fiscal year as hereinafter mentioned, shall make apportionment and appropriations for their expenditures for that year, based as nearly as may be, upon the estimates made by them in April previous, and such apportionment and appropriations shall be specified and arranged under the heads or items designated in said estimates. The expenditures of the

1. See 23 D. L. p. 157.

year under any head or item of appropriation, shall not exceed that item of appropriation unless the same be voted for by two-thirds at least of all the members of said Board, a record of which vote shall be made upon the minutes. Under no circumstances shall the appropriation for the erection or extension of school houses, and for furniture and heating apparatus for the same, be used for any other purpose. The said Board shall have no power or authority, except when specially authorized by act of the General Assembly, to borrow money, or contract or create any debt or liability except ordinary debts and liabilities incurred in executing the duties imposed on them by law, to be paid out of the said appropriation made by Council and the receipts of the year for the time then current; (a) no money shall be paid from the treasury of the Board unless the same shall have been appropriated as aforesaid.

Appropriation for construction not to be used for any other purpose.

No power to borrow money.

(a) See a practically similar provision in Sec. 71 of the Charter.

Sec. 10. The said Board shall, during the month of July in each year, cause to be published, in two or more of the newspapers of the City of Wilmington, a full report of their accounts and proceedings during the past year, setting forth aggregates under appropriate heads. The Board shall also depute one of its members, together with the Secretary of the Board, to attend with and lay its accounts before the Council at the next regular meeting following such publication, and also to settle with the State Auditor.

Accounts to be published in two newspapers.

Also to City Council.

Sec. 10.[1] The City Auditor shall examine all bills against said Board and endorse them as correct before they are presented to said Board for payment; he shall also examine and countersign all drafts or orders and withhold his signature in case the draft or order is made without sanction of law, or with any circumstances of fraud actually or presumably attached thereto, in all of which cases he shall report his action and the grounds therefor to the said Board at their ensuing meeting; said Board shall thereupon duly,

City Auditor, his duty respecting school expenditures.

Course of payment of bills not approved by City Auditor.

1. So enrolled.

carefully and publicly consider the case and shall sustain or overrule his action by a vote of (2-3) two-thirds of all the members elected to said Board, whereupon it shall be the duty of the City Auditor in case he shall be overruled to countersign the said draft or order, in which case he shall be exonerated from all responsibility in the premises. (*a*) He shall also keep a book in which an exact copy of the receipts and expenditures of said Board shall be entered. All money received by the said Board from sales of articles, or from any source whatsoever shall be deposited with the City Treasurer for which a receipt shall be taken. The City Treasurer shall immediately deposit said funds in such bank as may be designated by said Board, and the order or warrants drawn against such funds shall be drawn and signed by the Secretary of the Board, signed by the President and countersigned by the City Auditor and City Treasurer. The City Treasurer upon depositing the funds of said Board shall make a certificate of Deposit in triplicate, which shall be signed by the authorized agent of the bank, one of each certificates shall be delivered to the City Auditor, one to the Secretary of the Board and the third be retained by the City Treasurer. The City Treasurer shall pay out all warrants or orders and shall take receipt for same. He shall keep a Cash Book containing the receipts and expenditures of said Board and shall render a statement of the financial condition of said Board at each meeting.

City Auditor's book, to contain what.

City Treasurer's duty respecting funds.

Drafts on funds, how drawn.

City Treasurer, how to deposit funds.

Books to be kept by City Treasurer.

(*a*) See Sec. 39 of the Charter.

Council to determine amount of tax for school.

Proviso.

SEC. 11. The Council shall, every year, when determining the amount necessary to be raised on the persons and estates in the City of Wilmington for public use, also include the sum necessary to be raised on the persons and estates for executing the foregoing provisions; provided, that the amount to be raised for current school expenses as aforesaid in any one year shall be exclusive of the amount designated for the erection or extension of school houses and for furniture and heating apparatus for the same. The amount collected for school purposes shall be paid into the city treasury as other taxes are paid. At the time of making the an-

nual appropriations for public use, the Council shall also make an appropriation for current school expenses equal in amount to that annually computed and laid before said Council by the "Board of Public Education in Wilmington;" provided that the sums so computed and appropriated shall be exclusive of the amount designated for the erection or extension of school houses and for furniture and heating apparatus for the same; and, provided further, that any demand made by the Board upon the Council for ordinary and current expenses, exclusive of the amount required for the erection or extension of school houses and for furniture and heating apparatus for the same shall not [be less than one hundred and eighty-eight thousand dollars[1] for the fiscal year 1907-8, and the increase for any succeeding fiscal year shall not be less than two per cent. additional upon the aggregate amount for the fiscal year preceding, [Provided, however, that said increase shall be in proportion to the increase in revenue of the City of Wilmington, but in no year shall said increase be more than five per cent. and] provided further, however, that in the event that The Council, at any time, shall make an appropriation in excess of the minimum appropriation or percentage of increase as hereinbefore provided, the said Council shall have the power and authority to designate what proportion, if any, of the increase so appropriated over and above the before mentioned minimum, shall be used for the purpose of adjusting, equalizing and increasing the salaries of teachers employed by said Board, and so much of said fund so designated by The Council shall thereupon be used for no other purpose than to adjust, equalize and increase such salaries of teachers.] The Council shall appropriate annually for the erection or extension of school houses and for furniture and heating apparatus for the same the amount estimated by said Board therefor not to exceed Twenty Thousand dollars per annum.[2]

Council to appropriate for current school uses, certain sum.

Proviso.

Limit of sum appropriated.

Act of March 1, 1907, 24 D. L. 223.

Increase in proportion to increase in revenue and not more than 5% in any one year.

Act of April 15, 1909, 25 D. L. 187.

Amount to be appropriated for buildings, etc.

Limit.

1. See Act of March 25, 1907, 24 D. L. p. 352, in which the minimum of appropriation by Council is $180,000, p. 59 of this volume.

2. See 23 D. L. p. 157.

Proviso, when costs for buildings, etc., exceed the limit, how to be met.

Provided, however, if the amount appropriated by the Council for the erection or extension of school houses, and for furniture and heating apparatus shall not be sufficient to meet the expenses for which it was appropriated the said Board shall have the right to meet such deficit by using other money in their hands appropriated by said Council for school purposes, provided they shall not use an additional sum of more than Ten Thousand dollars for any one year.

School appropriations, how to be paid.

SEC. 12. The amount of the appropriation for the current school expenses so made by the Council shall be paid in full, in twelve equal installments, on the second Monday in each and every month during the year, by the City Treasurer, upon orders drawn by the aforesaid Board, under the hand of the President, attested by the Secretary. The amount appropriated for the erection or extension of school houses and for furniture and heating apparatus for the same shall be paid by the City Treasurer on or before the first day of August of the fiscal year, for which the same was so designated and raised.

State funds to be drawn by Board.

SEC. 13. The said Board shall have the right to draw dividends from time to time made and entered to the credit of the School Districts Nos. 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20½, 78, 78¼, 78½ and 102 in New Castle County, constituting the Public School District of Wilmington in the account of the trustees of the State School fund with said district respectively; and it shall be the duty of the said trustees to pay said dividends upon an order signed by the President of said Board and attested by the Secretary, accompanied by a certificate signed and attested in like manner, that the said Board has received for the benefit of public schools under their charge a sum equal to the aggregate of the sums required to be paid in every of the said districts in order to the drawing of the said dividends, the said Board being substituted for the school committee of the united school districts composed of the school districts aforesaid.

Drafts, how to be signed.

Certificate, what to contain.

Property vested in Board exempt from taxation.

SEC. 14. All property, real or personal, vested in the Board of Education in Wilmington shall be exempt from all kinds of taxes, and from sale or execution or other writ or order in the nature of an execution. It shall also be exempt from the payment of water taxes or rents in all buildings used for school purposes; all sewer connections for school use shall also be without tax or charge.

City Solicitor attorney for Board.

His duty.

Compensation.

SEC. 15. The City Solicitor (*a*) shall be the legal adviser and attorney for the Board of Education; he shall prosecute all actions against a member, officer, agent or employee of the Board of Education for malfeasance or misfeasance in office; he shall be the legal counsel of said Board, or officers thereof, in all civil actions brought by or against it, and shall conduct the same in his official capacity. No compensation other than the regular salary shall be allowed for such service.

(*a*) Prior to the passage of this Act, the Board of Education used to employ any attorney it desired, and pay him for services rendered.

Board to pay to Wilmington Institute certain sum.

City Council to reimburse Board for such payments.

SEC. 16. Said Board of Public Education shall annually, from the funds appropriated to its use as aforesaid appropriate and pay over to the Wilmington Institute, in manner and form as is provided in the Act entitled "An Act respecting a free library and to increase the usefulness of the schools of Wilmington," passed at Dover, April 26, 1893, the sums of money prescribed by said Act, and "The Council" of the City of Wilmington shall annually appropriate for the use of said Board of Public Education, in addition to the appropriations for said Board hereinbefore provided for, such sum and sums of money as shall reimburse to the said Board the excess of the payments made by said Board to the said Wilmington Institute in any year under the provisions of the Act aforesaid above the amount paid by said Board to said Institute in the fiscal year 1904-5.

Work to be done and supplies needed to be awarded to lowest bidder.

SEC. 17. For all work and labor hereafter required to be done, and goods, chattels, wares, merchandise, materials, tools and machinery to be furnished, or had and used by or for account of the said Board, where the cost in any particu-

lar case will probably exceed the sum of One Hundred dollars, the committee having such business in charge shall publicly invite sealed proposals for the doing of such work and the furnishing of such goods, chattels, wares, merchandise, materials, tools and machinery, and give the contract to the lowest (*a*) bidder or bidders; provided that they may require from all or any of the bidders security for the faithful performance of their contract.

Bidder to give bond.

(*a*) See the case of Keogh vs. Wil., 4 Del. Ch. 491 at 498-9. (yr. 1872) Sec. 8, "a," p. 234 of this volume.

SEC. 18. All Acts and parts of Acts inconsistent herewith are hereby repealed.

SEC. 19. This Act shall be deemed and taken to be a public Act.

Approved, March 30, A. D. 1905.

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11 D. L. 4.

AN ACT to amend the "Act for the benefit of Public Schools in Wilmington."

SECTION 1. * * * * * * * * That the Act of the General Assembly of this State for the benefit of public schools in Wilmington, passed at Dover, February 9, 1852, be amended as follows; that is to say:

* * * * * * * * * * * *

SEC. 2. *Be it therefore enacted as aforesaid,* That the right and estate, late of the United School Districts numbers 10, 11, 12, 13, 14, 15, 16, 17 and 18 in New Castle County, in and to the lot of land and school house at the corner of French and Sixth streets in Wilmington aforesaid, and the right that belonged to the School Committee of School District No. 9 in New Castle County, before the uniting of said district with the rest of the City of Wilmington under the board aforesaid, in and to the school house and lot of land in Twelfth street in Wilmington aforesaid, have passed and shall pass to the said Board of Public Education in Wilmington and are and shall be vested in the said board; and the said board shall have the

Title to school house at Sixth and French streets and in Twelfth street vested in Board of Public Education.

possession and charge of the said school house and lots of land and exercise all acts of ownership for security and preservation of the same; and the said school house and lot of land at the corner of French and Sixth streets, as well as the lots of land and new school house of the said board in the First ward in Wilmington aforesaid, on Washington street, and all other the land and property which the said Board of Public Education shall acquire, shall be liable for the debts and contracts which the said board shall incur and make; and further, the said Board of Public Education in Wilmington shall have power to grant and convey to any person or corporation in fee simple, by way of mortgage, the said lot of land and school house at the corner of French and Sixth streets with the appurtenances, and the said lots of land, and new school house in the First ward aforesaid on Washington street with the appurtenances, and any other land or property acquired by said board, for securing to such person or corporation the payment of any sum or sums, not exceeding in the whole six thousand dollars with interest, at such time or in such manner as may be agreed upon.[1] The said board may bring suit before a justice of the peace or in the Superior Court as the amount claimed may determine the jurisdiction, for damages for any trespass or injury to either of the school houses aforesaid or lots of land aforesaid, or the fixtures thereof or the furniture or books therein or any property of the board, and recover double damages with double costs.

School house on Washington street, etc.; liable for debts.

May mortgage and convey land in fee simple.

Trespass or injury to school house or fixtures.

Passed at Dover, January 20, 1853.

AN ACT to Compel the Attendance of Children at the Public Schools of the State. 24 D. L. 213.

SECTION 1. That following the approval of this Act every parent, guardian or other person in this State having control of a child or children between the ages of seven and fourteen years shall be required to send such child or children to a day school, in which the common English branches

Children between 7 and 14 years to attend school at least five months annually.

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1. See Secs. 1 and 2, 23 D. L. p. 140 for the general powers of the Board of Education relative to real estate.

are taught; and such child or children shall attend such school continuously for at least five months each year during the time in which the public school in their respective districts shall be in session, beginning not less than one month after the opening of said school, unless such child or children shall be excused from attendance by a majority of the Commissioners of the School District in which the parent, guardian or other person resides, upon the presentation to said Commissioners of satisfactory evidence showing such child or children are prevented from attendance upon school or application to study by mental, physical or other urgent reasons, and such excuse must be countersigned by the County Superintendent of the County in which such District is located; but the urgent reasons shall be strictly construed and shall not permit of irregular attendance.

Exceptions.

School district may reduce compulsory period to three months.

Provided, that each school district shall have power each year at its regular annual meeting to reduce the period of compulsory attendance to not less than three months, in which case the school meeting must at that date fix a time for compulsory attendance to begin, but such date shall not be later than January 2d, of each school year. Provided that in case there be no public school in session within two miles by the nearest traveled road of any person within the school district, he or she shall not be liable to the provisions of this Act, unless a free conveyance is provided.

Applicable only to pupils within two miles from school house.

Instruction for like period in private school. &c., exempts attendance at public school.

Provided, that this Act shall not apply to any child that has been or is being otherwise instructed in English in the common branches of learning for a like period of time in any private school, or by any legally qualified governess or private teacher in a family, or by any other means which shall be approved by the County Superintendent of the proper county.

Private school must report.

Provided further, that any principal or teacher of any private school or educational institution shall report non-attendance as provided in Section 5 of this Act. And provided also that the certificate of any principal or teacher of a private school or of any institution for the education of children in which the common English branches are taught, set-

ting forth that the work of said school is in compliance with the provisions of this Act, shall be sufficient and satisfactory evidence thereof, and the principal or teacher of said school or institution shall have the power to excuse any child or children for non-attendance during temporary periods in accordance with the provisions of this Act.

Violation of law a misdemeanor.

SEC. 2. That for every neglect of duty imposed by the first section of this Act, the principal or teacher or person in parental relation, offending, shall be guilty of a misdemeanor, and shall, upon conviction thereof before a justice of the peace, magistrate or alderman, forfeit a fine not exceeding two dollars on first conviction and a fine not exceeding five dollars for each subsequent conviction, and in default of payment of said fine, the defendant may be committed to the county prison for a period not exceeding two days for the first conviction, and for a period not exceeding five days for each subsequent conviction. Provided, upon conviction the defendant or defendants may appeal to the Court of General Sessions of the proper county within fifteen days, upon entering into recognizance with one surety for the amount of fines and costs. Provided, however, that before such action shall be brought for any of the aforesaid penalties, the parent, guardian or other person liable therefor, shall be notified in writing by the County Superintendent of Schools, or such person as he shall designate, of such liability, and shall have opportunity, by compliance with the requirements of this Act within three school days then and thereafter to avoid the imposition of such penalty. The mailing of such notice to the usual address of offending party shall be deemed sufficient under this Act. But after such notice has been given, if the same child is absent from school three days or their equivalent in time during the remaining period of compulsory attendance, without excuse as provided by Section 1 of this Act, the parent, guardian or person in parental relation, shall be liable to prosecution under this Act without further notice.

Penalty.

Appeal to Court of General Sessions.

Duty of Superintendent before prosecution.

What notice sufficient.

Fines to whom payable.

The fines provided for by this Act, shall, when collected, be paid over by the officers collecting the same, to the treas-

urer or clerk of the school committee or board of the respective districts for the use of the school district in which such person convicted resides, to be applied and accounted for by such treasurer or clerk in the same way as other moneys raised for school purposes; such fines shall be collected by a process of law similar to the collection of other fines.

Attendance officers.

Duties of.

SEC. 3. Boards of education and school committees may, in all districts, employ one or more persons to be known as "attendance officers" whose duty shall be, in addition to the duties provided elsewhere in this Act, to look after, apprehend and arrest without warrant, truants and others who fail to attend school in accordance with the provisions of this Act. When an attendance officer arrests or apprehends any truant or other person, as herein set forth, he shall have power immediately to place him or her in the school in which he or she is or should be enrolled, or at the expense of the parent, guardian or person in parental relation, in such private school as provided by Section 1 of this Act, as the parent, guardian or person in parental relation may select. And in case the parent, guardian or person in parental relation shall refuse or neglect immediately to select such school, the school commissioner or secretary for school commissioners shall have full power to designate the school in which the child shall be placed.

Compensation of.

The persons serving as such attendance officers, shall be entitled to such compensation as shall be fixed by the Boards appointing them, and such compensation may be paid out of the school funds. But the sums paid for such services must be approved by the Superintendent of Schools of the county. In case no truant officer be appointed, the secretary or clerk of the local school commissioners shall serve as such officer.

Districts may establish special truant schools.

Commissioners of any school district or districts or of two or more districts jointly, may establish special schools for children who are habitual truants or who are insubordinate or disorderly during their attendance upon instruction in the public schools, and may provide for the proper care, maintenance and instruction of such children in such schools for such period of time as the Board may prescribe. But be-

fore the pupil shall be placed in such special school, the parent, guardian or person in parental relation shall have opportunity to be heard.

Incorrigible truants may be confined in Ferris Industrial School.

All truancy and incorrigibility shall be deemed disorderly conduct, and in case no special school, as herein prescribed has been established, the County Superintendents of Schools, or secretary or attendance officer, as the County Superintendent shall designate, shall proceed against such truant or incorrigible pupil as a disorderly person before a justice of the peace, magistrate or alderman, and upon conviction, the pupil may be sentenced for a definite time to the Ferris [Industrial] School [or Delaware Industrial School for Girls]. The State Treasurer shall pay to the authorities of the said school the sum of forty cents per day, from money not otherwise appropriated, for each day such pupil is confined in said institution.

Act of March 18, 1909, 25 D. L. 165.

Pay for such pupils.

Duty of assessors.

SEC. 4. That it shall be the duty of the assessors when making each assessment of property for taxation for school purposes, when not notified and directed to the contrary by the school commissioners, to make in a substantial book, provided by the County Superintendent of Schools at the expense of the State for that purpose, a careful and correct list of all children between the ages of seven and fourteen years within his district, giving the full name, date of birth, age, sex, race, estimated distance from school-house by nearest traveled road, name and address of parent, guardian or person in parental relation; which enumeration, after approval by the secretary of the said school district, shall be sent by the assessor to the County Superintendent of Schools of the County in which the enumeration is made [on or before the first day of September]. And the receipt of the County Superintendent of Schools shall entitle the aforementioned assessor, to a fee of one dollar for each one hundred names or fraction thereof, of children on such list; said sum to be paid from the school funds of the district in which such enumeration shall have been made.

List of children between 7 and 14 years.

Act of March 18, 1909, 25 D. L. 165.

Fee of assessors.

County superintendent to send list

It shall be the duty of the said County Superintendent of Schools to forward to the principal teacher of the proper

of children to teacher of district.

school district prior to September 15th in each year, a list of all children in his or her district who are subject to the provisions of this Act.

School officers may add or correct list.

Provided further, that the attendance officer, if there be any, or the County Superintendent of Schools or the secretary or clerk of the school commissioners, or principal teacher, shall have authority to make any additions or corrections to the assessor's list aforesaid for the purpose of carrying into effect the provisions of this Act.

Report of teacher to attendance officer and county superintendent.

SEC. 5. That it shall be the duty of each teacher of the school district at the close of each school month, to report to the attendance officer, and to the County Superintendent of Schools, the names of all children in the district who have been absent without lawful excuse; when, if it shall appear that any parent, guardian or other person having control of any child or children shall have failed to comply with the provisions of this Act, after notification in writing as provided in Section 2, the County Superintendent, or such attendance officer as he shall direct, shall proceed in the name of the State under authority of the commissioners of the local district affected, against the offending party or parties in accordance with the provisions of this Act.

Costs, how paid.

Provided further, that if sufficient cause be shown for a failure to comply with the provisions of this Act, or if the costs of prosecution cannot be collected from the defendant in case of his or her conviction, said costs shall be paid out of the school funds, upon a proper voucher approved by the commissioners of said district.

Violation of act a misdemeanor.

SEC. 6. That the assessor of school taxes, principal, teacher, secretary or attendance officer if there be one, of any Board of Commissioners, who willfully neglects or refuses to comply with the provisions of this Act shall [upon complaint lodged by the County Superintendent of Schools] be guilty of a misdemeanor and upon conviction thereof before an alderman, magistrate or justice of the peace, shall forfeit or pay a fine not exceeding twenty-five dollars, subject to the right of appeal to the Court of General Sessions

Act of March 18, 1909, 25 D. L. 165.

Penalty.

of the proper county within fifteen days upon entering into recognizance with one surety for the amount of fines and costs.

State Treasurer, duty of as to school dividend.

SEC. 7. That the State Treasurer of Delaware shall withhold one-fourth the State dividend from any school district or districts which neglects or refuses to enforce the provisions of this Act in a manner satisfactory to the County Superintendent of Schools of the county in which such school shall be located.

Expenses of enforcement of act, how paid.

SEC. 8. That the necessary expenses incurred by State officials in carrying out and enforcing the provisions of this Act shall, upon approval by the State Board of Education, be paid by the State Treasurer.

Act of March 18, 1909, 25 D. L. 165.

SEC. 9. [That in enforcing the provisions of this Act within the limits of the school districts of the City of Wilmington, the powers and duties herein conferred upon the county superintendents of schools, board of school commissioners by whatever title known, and assessors, are hereby conferred upon the "The Board of Public Education in Wilmington," and that it shall be the duty of the Board of Police Commissioners of the City of Wilmington to co-operate with the "The Board of Public Education in Wilmington" in enforcing the provisions of this Act, to look after, apprehend and arrest without warrant, truants and others who fail to attend school in accordance with the provisions of this Act.]

Board of Education in Wilmington to have control in the City of Wilmington.

Approved March 15, 1907.

CHAPTER 219.

OF FREE SCHOOLS.

AN ACT providing graded School facilities for the Children of this State.

Selection of graded schools.

SECTION 1. That from and after the passage of this Act, it shall be the duty of the State Board of Education, and the same is hereby authorized, empowered and directed to se-

lect such and such number of the free graded schools now established and maintained in any of the school districts of this State, for the purpose of admitting to such schools the children of other districts in which no graded school exists; and that the schools so elected as aforesaid, shall then be free to all the children of school age of the county in which such schools are situated, or of such district or districts, or of such parts thereof, as shall be determined by said Board and under the rules and regulations to be promulgated by said Board as hereinafter provided.

Schools selected to be free to children of county or districts.

Regulations.

Certification of schools selected.

SEC. 2. That the names and numbers of the free graded schools so selected as aforesaid, shall be certified by said Board to the school committees or boards of education of such schools, and also to the school committees of all of the districts, the children of which the said Board shall determine may be admitted in such free graded school. And for the purposes and provisions of this Act, the said State Board of Education shall have full and final power to decide what shall constitute a graded school, and what district or districts are without such graded schools.

Power of State Board of Education.

Rules and regulations governing admission of children.

SEC. 3. That the said State Board of Education shall also have full and final power and authority to promulgate such rules (a) and regulations governing the admission of all children under the provisions of this Act, provided that no free graded school shall be compelled to admit to any of its departments any child from another district, when such department is already full; and such rules and regulations shall be binding upon all the districts in this State. The said rules and regulations, together with the names and numbers of the districts affected, shall be certified by said Board to the School Committees or Boards of Education of all the districts affected thereby. Such rules and regulations, and such names and numbers shall be advertised in such manner, and for such length of time as said Board shall deem proper; which advertisement shall be paid for as other printing of said Board. The said Board shall also have full power to alter, change, or add

Certification of rules and regulations.

Advertisement of.

Alterations of rules, &c.

to any of such rules and regulations at any time it may think proper.

(*a*) For the legal meaning of the word "rules," see Sec. 76, "a" of the Charter, and the case of Morris et al vs. Pilot Coms., 7 Del. Ch. 176 (yr. 1894)

Note.—An interesting and instructive history of school education in this State is contained in the case below cited, a part of which is as follows:

Grubb, J.: "When establishing their early settlements within our borders, Sweden and Holland, then foremost among all the nations of Europe in the promotion of public education, especially directed their colonies to provide for the maintenance of schools and schoolmasters and the instruction of the young. And when the English succeeded them, William Penn's Frame of Government, promulgated in 1682 ordained "That the Governor and Provincial Council shall erect and order all public schools and encourage and reward the authors of useful sciences and laudable inventions in the Province." * * But whilst such was the enlightened design of our early rulers, yet, from our earliest settlement in 1638 until the enactment of our free school system in 1829, the cause of education was chiefly conducted and maintained in Delaware by religious societies and private schools, or academies. Frequently the clergyman was the schoolmaster and the church, or a private house, the school where popular instruction was imparted. (p. 90) * * So far as our statutes show, governmental aid to education was first rendered in 1743. * * The next educational encouragement was given in 1772, when a lot of land in New Castle was granted for a school house site. * * Next follows the direction of our second State Constitution of 1792, that "The Legislative shall, as soon as conveniently may be, provide by law for the establishment of schools and promoting arts and sciences." (91). * * In 1796 the Legislature passed "the Act to create a fund sufficient to establish schools in this State." "This School Fund was the first appropriation in the history of the State, of its public revenues for the encouragement and support of popular education. * * In 1817 and in 1821 the Legislature appropriated a portion of the annual income of this fund" (United States Surplus Revenue) "to be expended yearly for the instruction of the children of the poor in the rudiments of knowledge. But this project proving unsuccessful, said acts were repealed by the Act passed February 12, 1829, Vol. 7, p. 184, entitled "An Act for the establishment of free schools." This Act created the first general free school system which had therefore existed in Delaware." (91-92). Money under the above law for school houses and for the support of free schools, was raised "only by subscription or by voluntary contribution." (93). By an Act passed in 1830, 8 D. L., p. 21, the school voters of the school districts by a majority vote, could raise money, not exceeding $300, by taxation. (93)

In 1861, 12 D. L. p. 108, a law was passed making it mandatory upon the school committee to raise, yearly, by taxation, a certain sum, and leaving it to the voters to raise more if they so desired. (94-95). In 1875, 5 D. L. p. 84 a State Board of Education, a salaried State Superintendent of Free Schools, &c., were created. Then came the constitutional provision (Art. 10), and the law of 1898 passed in pursuance of said provision, and of this Act the Judge said:

"As the result of our consideration of this Act and of the legislative purpose respecting it, we conclude that it was designed to provide a complete general system for the government and administration of the free public schools of the State, and was intended to be a complete revision of the prior general public school laws, and a consolidation and codification of them, with such new provisions as were deemed advantageous, in a

single act designed to cover the *whole* subject, in all respects, and to be a substitute for all antecedent general free school legislation not incorporated therein, or continued in force thereby as essential to its effective operation.''

Husbands vs. Talley, 3 Penn. 88 at 103. (yr. 1901)

Powers of county school commissioners.

SEC. 4. The several County School Commissions now established by law shall have full and final power, jurisdiction and authority to hear and finally determine any disputes arising under this Act between any parent or guardian of any child, and any school officer, or between several school officers, school committees or boards of education; and in case any of said school commissions shall determine that any child should be admitted to any free graded school, selected by the State Board as aforesaid, and any school officer shall refuse to admit such child, the said Commission shall certify the facts to the State Auditor, upon which it shall be unlawful for said Auditor to settle any of the accounts of the district wherein such graded school is situated, until a further certificate from said Commission that such child has been admitted.

Teacher of graded school to certify admission, &c., of children to State Board.

State Board to certify to State Treasurer.

Act of Feb. 25, 1909, 25 D. L. 162.

Limit of number of children admitted.

SEC. 5. Whenever any child shall be admitted under the provisions of this Act, to any free graded school, the teacher or principal of such school, shall, within ten days, certify such fact, together with the name of the child, the date of admission, the name or number of the school district in which such child lives, and the name or number of the district of such free graded school, to the State Board of Education, and the said Board shall certify the substance of the aggregate of such certificates to the State Treasurer some time before the first day of July in each year. Whenever it shall appear from the certificates of the principals or teachers in the free graded schools of any county, that two hundred and fifty children have been admitted to such schools under the provisions of this Act in any one county, it shall be the duty of the State Board to notify the committees or Boards of Education of each of the free graded schools so selected by it as aforesaid, in such county, that no further children shall be admitted under the provisions of this Act, and the said Board shall not certify any further names to the State Treasurer as aforesaid.

[SEC. 6. That for every child admitted under the provisions of this Act to any free graded school, such free graded school shall be entitled to receive the sum of twenty cents for each day's attendance of such child in such graded school, and the entire amount, due to such graded school for such child, shall be paid to the district in which such graded school is situated, by the State Treasurer for every child so admitted as aforesaid, sometime in the month of July, upon receiving the vouchers of the teachers or principal of such graded school showing the name or names of such child or children so admitted as aforesaid, and the number of days' attendance of each such child in such graded school; provided, that no moneys shall be paid by the State Treasurer under the provisions of this Act to any district for or on account of the admission of any child whose name does not appear upon the certificate of the State Board to the State Treasurer as provided in Section 5 of this Act, as having been admitted to the graded school of such district. The said State Treasurer shall then certify the amount so paid to any district, to the State Auditor who shall include it in the settlements of the accounts of the district so receiving said amount as aforesaid.]

Act of Feb. 25, 1909, 25 D. L. 162.
Graded schools.
Compensation for non-resident pupils.
How paid.
Exception.
State Treasurer to certify to State Auditor.

[SEC. 7. That nothing in this Act shall be deemed or construed to prohibit or prevent "The Board of Public Education in Wilmington" from refusing in its discretion to admit to any of the Public Schools in the City of Wilmington any child not residing in said city or from charging for the tuition of any such non-resident child, such sum as the said Board may deem proper; provided, however, that when any such child shall be so admitted to the Public Schools of the City of Wilmington under the provisions of this Act and with the consent of the said Board of Education, then the said Board of Public Education in Wilmington shall be entitled to receive from the State Treasurer the amount due under the provisions of this Act for the tuition of such child and the amount so received from the State Treasurer for the tuition of such child shall be deducted from the amount due from the parents or guardian of such child for its tuition as fixed by "The Board of Public Education in Wilmington" and provided further, that all

Act of April 19, 1909, 25 D. L. 161.
Board of Education in Wilmington may refuse to admit non-resident pupils.
May charge and fix amount of tuition.
When admitted State Treasurer to pay the amount provided by law.
Board of Education of Wilming-

ton same powers as County School Commissioners.

rights and powers vested in the State Board of Education or the County School Commissioners by virtue of this Act shall, within the corporate limits of the City of Wilmington, be vested in "The Board of Public Education in Wilmington."]

Approved March 9, 1899.

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24 D. L. 222. *AN ACT Pertaining to the State of Delaware.*

Constitution to be taught in schools.

SECTION 1. That the Constitution of this State shall be taught and explained to the scholars in each and every one of the public schools of this State.

It shall be the duty of the several School Commissioners or Boards having control of said schools to see that the provisions of this Act are complied with.

Approved April 9, A. D. 1907.

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20 D. L. 22. *AN ACT entitled "An Act providing for the purchase and display of the United States Flags in connection with Public School Buildings of the State."*

U. S. flags to be purchased by each school district and be displayed during school hours.

SECTION 1. That the Board of Education or School Commissioners in the several cities and in each and every single, united or incorporated school district of this State shall and hereby are authorized to purchase a United States flag, which shall not be less than eight feet long and six feet wide, flag staff and necessary appliances therefor, and shall display said flag upon or near the public school building in said cities or districts during school hours and at such other times as to the said boards or commissioners may seem proper.[1]

SEC. 2. That this act shall take effect immediately, and that all acts or parts of acts inconsistent with the same are hereby repealed.

Passed at Dover, January 31, 1895.

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1. For similar power and duties see 21 D. L. p. 185, Sec. 16.
2. Foreign flags not to be displayed on public buildings, except under certain conditions. 20 D. L. p. 193. See p. 535, this volume.

CHAPTER 93.

OF FREE SCHOOLS.

AN ACT authorizing and empowering "The Board of Public Education in Wilmington" to issue bonds covering the real estate of said corporation for the purpose of raising sums of money to be used in erecting, furnishing and equipping new school houses in the City of Wilmington. 23 D. L. 157.

Whereas, by the charter of "The Board of Public Education in Wilmington," a sum of money not exceeding Twenty Thousand dollars per annum is to be paid the said corporation by the Mayor and Council of Wilmington for the purpose of erecting and equipping new school houses in the City of Wilmington; Preamble.

And Whereas, by an Act of the General Assembly of the State of Delaware, approved March 8, 1901, being Chapter 170 of Volume 22, Laws of Delaware, "The Board of Public Education in Wilmington" was and is directed to pay off certain certificates of indebtedness issued for the payment of the New High School and the buildings connected therewith out of the annual amount of money which the said Board was and is authorized to expend yearly for new buildings as above stated; Preamble.

And Whereas, it may be necessary to erect new school buildings in the City of Wilmington during the period required to pay off said certificates of indebtedness; therefore, Preamble.

[Section 1. That "The Board of Public Education in Wilmington," be and is hereby authorized and empowered to borrow upon the faith and credit of said "The Board of Public Education in Wilmington," a sum not exceeding One Hundred and Sixty Thousand Dollars to be expended for the purpose of erecting and equipping new school houses in the City of Wilmington, and for that purpose to issue bonds in denominations of One Thousand Dollars each and bearing such rate of interest not exceeding four and one-half per centum per annum as said "The Board of Public Education in Wilmington" may deem expedient, said bonds to be so arranged as to the time of payment that not more than Twenty Thousand Dollars of the principal sum so borrowed shall become Board authorized to borrow money to erect new school house. To issue bonds. Not more than $20,000 payable one year.

due and payable in any one year; provided, that no part of said principal shall become due and payable until six years from the date of issue of said bonds. The interest upon said bonds shall be payable semi-annually in each and every year from the date of issue thereof. Sixty of said bonds may be issued in the year A. D. 1907 and shall be known as "Series A;" twenty of said bonds may be issued in the year A. D. 1908 and shall be known as "Series B;" twenty of said bonds may be issued in the year A. D. 1909 and shall be known as "Series C;" twenty of said bonds may be issued in the year A. D. 1910 and shall be known as "Series D;" twenty of said bonds may be issued in the year A. D. 1911 and shall be known as "Series E;" and twenty of said bonds may be issued in the year A. D. 1912 and shall be known as "Series F." None of said bonds shall be issued except by resolution passed by a majority vote of said Board, and then only for the purposes in this section set forth.]

Bonds not payable within six years.

Act of March 4, 1907, 24 D. L. 224.

Amounts to be issued at sundry times.

SEC. 2. [The payments of the said above mentioned bonds shall be made out of the amount of money which said Board is authorized to expend yearly for new buildings, and when any of said bonds are issued, a corresponding amount of said funds shall be pledged for the payment of said bonds, and when so pledged, it shall be unlawful for the Board of Public Education in Wilmington to use any of the moneys so pledged for any other purpose than for the payment of said bonds.]

Payment of bonds to be made out of certain funds.

Act of March 4, 1907, 24 D. L. 225.

SEC. 3. All of said bonds shall be signed by the President of the said Board and attested by the Secretary of the said Board, and have affixed thereto the common or corporate seal of the said "The Board of Public Education in Wilmington."

Bonds, how executed.

Approved April 6, A. D. 1905.

NOTE. * * * * * * * * *

NOTE.—"An Act Authorizing The Board of Public Education in Wilmington to issue Certificates of Indebtedness for a Sum not exceeding One Hundred and Fifty Thousand Dol-

lars for the payment of the New High School and the Buildings connected therewith, and the proper furnishing and equipping of the same,'' will be found under Acts in relation to the Sinking Fund and City Debt on page 467.

CHAPTER XIII.

ACTS IN RELATION TO THE SINKING FUND AND CITY DEBT.

		Page
1.	Act Providing the Plan of the Sinking Fund	454
2.	Act Confirming and Establishing Above Act	458
3.	Act in Relation to Rate of Interest on Bonds	458
4.	Act Extending Foregoing Acts to Original Issues of Bonds	458
5.	Act Authorizing the Borrowing of One Hundred and Twenty-five Thousand Dollars	459
6.	Act to Further Confirm and Establish the Sinking Fund Act	461
7.	Act Authorizing the Borrowing of Sixty Thousand Dollars	462
8.	Act Authorizing the Borrowing of Five Hundred Thousand Dollars	463
9.	Act Authorizing the Borrowing of Fifty Thousand Dollars	464
10.	Act Authorizing the Borrowing of Twenty-five Thousand Dollars	465
11.	Act Authorizing the Borrowing of Two Hundred and Fifty Thousand Dollars	466
12.	Act Authorizing the Borrowing of One Hundred and Fifty Thousand Dollars	467
13.	Act Authorizing the Borrowing of Fifty Thousand Dollars	468
14.	Act Authorizing the Borrowing of Fifty Thousand Dollars	469
15.	Act Authorizing the Borrowing of Fifty Thousand Dollars	470
16.	Act Authorizing the Borrowing of Ninety Thousand Dollars	471
17.	Act Authorizing the Borrowing of Two Hundred Thousand Dollars	474
18.	Act Authorizing the Borrowing of Fifty Thousand Dollars	477
19.	Act Authorizing the Borrowing of One Hundred Thousand Dollars	477
20.	Act Authorizing the Borrowing of Eight Hundred Thousand Dollars	479
21.	Act Authorizing the Borrowing of Money for Improving Streets, &c.	482
22.	Act Exempting from Taxation All Bonds of the City	484

11 D. L. 191. *AN ACT to provide a Sinking Fund for the payment of the city debt of Wilmington.*

Preamble. Whereas, The City Council of Wilmington on the twenty-third day of November, A. D. 1854, appointed a special committee to take into consideration the subject of the

extinguishment of the city debt and make a report thereon to the Council, and the said committee having so considered the subject did, on the seventh day of December in the year aforesaid, present a report to the Council, which, on the twenty-first day of December, was approved and adopted, and the said committee were instructed by a resolution framed by the Council to cause a bill to be drawn up embodying the plan and principles of the said report, and to apply to the Legislature at the present session thereof to enact the said bill into a law, and the enactments hereinafter contained or the tenor thereof having been approved by the said Council; therefore,

* * * * * * * * * *

All investments made under former Acts to be disposed of by Finance Committee.

SECTION 1. That all investments in bonds, mortgages and other securities for the payment of money which have been made by the City of Wilmington, under and by virtue of former Acts of the Legislature of this State for the establishment of a sinking fund, shall be disposed of by the Finance Committee of the City Council by sale, whenever the sale thereof can be made at par and without recourse, and the proceeds of such sales shall be applied to the payment of bonds which have heretofore been issued by the City of Wilmington and the payment of which is not hereinafter provided for.

Proceeds applied to payment of bonds.

Appropriations for the sinking fund.

SEC. 2. That the City Council of Wilmington shall appropriate the sum of one thousand dollars on or before the first day of April, in the year eighteen hundred and fifty-five, and one thousand dollars on or before the first day of October, in the year eighteen hundred and fifty-five, and a like and equal sum on or before the first day of April and the first day of October in every year thereafter, to be paid to the Commissioners of the Sinking Fund, said commissioners to be appointed in the manner hereinafter expressed, and the City Council shall on or before the first day of October, in the year eighteen hundred and fifty-five, and on or before the first day of April and the first day of October in every year thereafter, in addition to the sums aforesaid, appropriate a

Appropriations for interest.

sum equal to the interest money which shall have accumulated on the bonds to be cancelled in the manner hereinafter provided for, said interest to be paid to the said Commissioners of the Sinking Fund, and the semi-annual appropriation aforesaid shall continue to be paid until the whole debt of the city shall have been paid. (*a*)

(*a*) The object of the Sinking Fund Act was, gradually, to extinguish the city debt. Sec. 71 of the Charter is known as the Sinking Fund provision. It prohibits an increase of the city debt (except as therein specified), and provides that as the debt is gradually reduced, it shall so remain, and not, under any pretext, be afterwards increased. The Sinking Fund Act was passed in 1854, but the city was prohibited from increasing the city debt in 1843.

Grubb, J.: "Indeed, the power to borrow money to pay for * * real estate seems to have been exercised until 1843, when by Chapter 488, Vol. 9, Laws of Delaware, the City Council was prohibited from increasing the debt of the City of Wilmington."

Weldin vs. Wil., 3 Penn. 472 at 475. (yr. 1902)

See Sec. 116 of the Charter.

Canceling of bonds.

SEC. 3. * * * * * * * * * *

Issuing new bonds.

SEC. 4. * * * * * * * * * *

When interest shall cease.

SEC. 5. That all interest on any bond or bonds, which shall be issued under and by virtue of this Act, shall cease from and after the day on which said bond or bonds shall be made due and payable.

Election and qualification of Commissioners of the Sinking Fund.

SEC. 6. That the City Council shall, at its first stated meeting in the month of March, in the year one thousand eight hundred and fifty-five, choose by ballot from the citizens of Wilmington having a right to vote at the city election and owners of real estate in the city to the assessed value of not less than one thousand dollars, three Commissioners of the Sinking Fund. Immediately after their election the said commissioners shall draw lots for their respective terms of office, and the said terms to expire in one, two and three years from the day of their election. The Council shall, at its first stated meeting in the month of March, in the year one thousand eight hundred and fifty-six, and in every year thereafter, elect from the citizens as aforesaid one Commissioner of the Sinking Fund for the term of three years and until a successor is elected. The said commissioners shall receive no compensation.

Drawing for terms.

Election and term of Commissioner.

No compensation.

Bond of Commissioners.

SEC. 7. That each commissioner shall give bond to the City of Wilmington, in such amount and with security to be determined and approved by the City Council, and the said commissioners shall faithfully pay all moneys which shall come into their hands under and by virtue of any of the foregoing provisions, towards the liquidation and cancelling of any bond or bonds which shall be issued under the provisions of this Act, as the same shall fall due and be payable. On the liquidation and payment of any bond by the commissioners, they shall cause to be written across the face of such bond, the word "cancelled," and the date when cancelled, and the bonds thus cancelled shall be retained by the commissioners until the whole debt of the city shall be paid. The commissioners shall keep a record of their proceedings under the Act, which shall, at all times be open for the inspection of the City Council.

Mode of canceling bonds.

Record of proceedings to be kept.

Act of April 29, 1897, 20 D. L. 676.

Bond by surety company. How paid for.

[And the bond herein above required to be given may be placed with any legitimate surety company, and the premiums to be paid therefor be paid by the Mayor and Council of Wilmington.]

Ordinances to carry out objects of this Act.

SEC. 8. That the City Council shall have authority to pass ordinances, when the same may be necessary, for the purpose of executing the provisions of this Act, and carrying out the objects thereof; *provided,* such ordinances shall in no case conflict with the spirit of this Act, nor suspend the efficient operation thereof.

Act not to be construed to increase debt.

SEC. 9. That so much of any Acts or parts of Acts as are inconsistent with, or repugnant to any of the foregoing provisions, be and the same are hereby repealed; *provided,* that nothing herein contained shall be construed to increase or extend the funded debt of the City of Wilmington, as the same is now limited by law.

Passed at Dover, February 9, 1855.

15 D. L. 552. *AN ACT to confirm and establish an Act entitled "An Act to provide a Sinking Fund for the payment of the city debt of Wilmington."*

Acts confirmed and extended to whole debt.

SECTION 1. That the provisions of the Act entitled, "An Act to provide a Sinking Fund for the payment of the city debt of Wilmington," being Chapter 186 of Volume 11, Delaware Laws, and the supplement thereto, being Chapter 263 of the same volume, be and the same are hereby confirmed, established, extended and considered and held to apply to the payment of the whole of the debt of said city, as well as that which may be incurred in the future as that which has arisen in the past, *except* such debt of the city the payment of which shall have been or may be otherwise specifically provided for.

Exception.

Passed at Dover, March 20, 1877.

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17 D. L. 900. *AN ACT to further amend an "Act to provide for a Sinking Fund for the payment of the city debt of Wilmington," passed at Dover, February 9, 1855.*

Duties of the Commissioners of the Sinking Fund.

SECTION 1. That hereafter the Commissioners of the Sinking Fund of the City of Wilmington, in causing the issue of sinking fund bonds under the provisions of an "Act to provide for a Sinking Fund for the payment of the city debt of Wilmington," passed at Dover, February 9, 1855, and the various supplements and amendments thereto, may fix the interest which such bonds shall bear at any rate not exceeding six per cent.

Interest not to exceed 6 per cent.

Passed at Dover, April 16, 1885.

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18 D. L. 362. *AN ACT to further confirm and establish an Act entitled "An Act to provide a Sinking Fund for the payment of the city debt of Wilmington."*

11 D. L. 186, extended to original issues of bonds.

SECTION 1. That the provisions, terms and conditions of the Act entitled "An Act to provide a Sinking Fund for the payment of the city debt of Wilmington," being Chapter 186 of Vol. 11, Delaware Laws, and the supplements and amendments thereto shall be and the same are hereby construed, es-

tablished, extended, considered and held hereafter to apply to the original issues of the bonds of the City of Wilmington, and that all the bonds of said city issued hereafter, for any and all purposes (payment of which is not otherwise specifically provided for) shall be issued, provided and made payable in the same manner and according to the terms, conditions and provisions of said Act providing a sinking fund for the payment of the city debt of Wilmington, as heretofore applied to the re-issues of the bonds of the city, but now and by this Act extended and applied to such future original issues of such bonds, without resort to any re-issues for the same.

Other bonds to be issued and payable according to Act.

Section 1 applicable to bonds issued during 1886.

SEC. 2. That the provisions, terms and conditions of Section 1 of this Act shall be and the same are hereby held valid, applicable to, and to include the bonds of the City of Wilmington issued during the year A. D. 1886, being sixty thousand dollars for the water works, and one hundred and fifty thousand dollars for the purposes of a city park.

Passed at Dover, April 21, 1887.

AN ADDITIONAL SUPPLEMENT to the Act entitled "An Act to limit the city debt of Wilmington, and to provide for the discharge thereof." 15 D. L. 251.

Borrowing of $125,000 authorized.

SECTION 1. That The Mayor and Council of Wilmington shall have power and authority, under an ordinance of the City Council to be passed with the concurrence of two-thirds of all the members for the time being of the City Council, at any time hereafter, to borrow a sum or sums of money not exceeding in the aggregate one hundred and twenty-five thousand dollars, which shall be in addition to the funded debt of the city heretofore authorized, and shall be appropriated, applied and expended, or so much thereof as shall be necessary, for the following purposes and works, that is to say: For a new water reservoir, and for improving the water works of said city, increasing and enlarging the conveniences for the supply of water to the said city, for laying water pipes along such streets of said city as the City Council may from time to time designate, for introducing the Brandywine water into the

How expended.

For a new water reservoir, improving the water works, laying water pipes, etc., and for introducing water into the Ninth ward, and

also south of the Christiana river.

Ninth ward, and into that part of the city lying south of the Christiana river, for land, bricks, sleeves, caps, stops, stop-house, and necessary adjuncts and appurtenances for a new reservoir, including fencing around the same, and for connecting the said new reservoir with the main pipe on Eleventh street. Any sum borrowed under the authority of this Act shall bear interest at a rate not exceeding six per centum per annum, payable at such time or times and in such manner as the ordinance shall prescribe.

Interest.

Surplus.

SEC. 2. The surplus of any money borrowed under the authority of this Act, which shall remain after the completion of the work to which it is hereby appropriated, shall be placed to the credit of the water account of the city, and used for no other purpose whatever than in repairing or improving the city water works, or increasing or distributing the supply of water to the city.

Sinking fund.

SEC. 3. For the redemption of so much of the funded debt of the city as shall be hereafter contracted under this Act, there shall be a sinking fund of thirty-five hundred dollars applied every year to the redemption thereof, until the whole of said debt is paid. To constitute said sinking fund the City Treasurer shall set apart and appropriate for the purpose the sum of thirty-five hundred dollars every year after the contracting of any debt under this Act, until the whole of such debt be paid, from money that shall come into his hands from water rents for the year, and in default of such, then from any other funds of the city in the treasury unapplied, and he shall apply the said sum so set apart and appropriated to the payment or purchase, at par, of so much of said debt. If in any year the City Treasurer shall not be able to pay off or purchase funded debt, at par, to absorb the whole of the sinking fund for the year he shall report the case to the City Council, and they shall make such order in regard to investment, management, control and disposal of said fund as they may deem proper; *provided*, that such fund shall stand pledged, and be

Duty of the City Treasurer.

When the Treasurer shall report to Council.

Proviso.

applicable to the redemption of said funded debt, and shall be used for no other purpose whatever.

* * * * * * * * * * *

Passed at Dover, March 1, 1875.

A BILL entitled an act to further confirm and establish an act entitled "An Act to provide a sinking fund for the payment of the City Debt of Wilmington." 20 D. L. 622.

Act construed.

SECTION 1. That the provisions, terms and conditions of the act entitled "An Act to provide a sinking fund for the payment of the city debt of Wilmington," being Chapter 186 of Volume 11, Delaware Laws, be and the same are hereby construed, established, extended, considered and held to apply to the original issues of the bonds of the City of Wilmington, amounting in the aggregate to two hundred thousand dollars, issued under the provisions of an act entitled "A further supplement to the act entitled 'An Act to limit the city debt of Wilmington and to provide for the discharge thereof,'" passed at Dover, March 20, 1877.

Issue of bonds.

SEC. 2. That the finance committee of the City Council and the Commissioners of the Sinking Fund shall on or before the days and times when the said bonds shall fall due and become payable cause other new bonds to be issued and the Mayor and City Council of Wilmington are hereby authorized to issue the same, said new bonds, so issued, to be made payable in the amounts and at the time specified as follows: One or more of said bonds for the sum of thirty-seven hundred dollars to fall due and become payable on April 1st, 1910; one or more of said bonds for the sum of twenty-six thousand five hundred and fifty dollars to fall due and become payable on October 1st, 1910; one or more of said bonds for the sum of twenty-seven thousand four hundred dollars to fall due and become payable on April 1st, 1911; one or more of said bonds for the sum of twenty-eight thousand two hundred dollars to fall due and become payable on October 1st, 1911; one or more of said bonds for the sum of twenty-nine thousand and fifty dollars to fall due and become payable on April 1st, 1912; one

When payable.

or more of said bonds for the sum of twenty-nine thousand nine hundred and fifty dollars to fall due and become payable on October 1st, 1912; one or more of said bonds for the sum of thirty thousand eight hundred dollars to fall due and become payable on April 1st, 1913; and one or more of said bonds for the sum of twenty-four thousand three hundred and fifty dollars to fall due and become payable on October 1st, 1913.

SEC. 3. That all acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

Passed at Dover, January 20, 1897.

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17 D. L. 401. *AN ACT to authorize "The Mayor and Council of Wilmington" to borrow sixty thousand dollars and to provide for the payment thereof.*

Authority to borrow $60,000 to purchase water rights in the Brandywine creek.

SECTION 1. That "The Mayor and Council of Wilmington" shall have power and authority and are hereby authorized, under an ordinance of the City Council to be passed with the concurrence of a majority of all the members thereof for the time being, at any time hereafter, to borrow upon the faith and credit of the city the sum of sixty thousand dollars, to be applied to the purpose and object specified in Section 3 of this Act, and shall have power to issue bonds to secure the re-payment of the money so authorized to be borrowed, and shall fix the rate of interest payable on said bonds.

Bonds.

Rate of interest.

Bonds, how payable.

SEC. 2. The bonds which shall be issued under the provisions of this Act shall be of the denomination of fifty dollars and multiples of fifty dollars, and shall be divided into numbered series and made payable with any interest which may be due thereon, in manner following, to wit: No. 118, for seven thousand four hundred dollars, to fall due and become payable October 1st, A. D. 1913; No. 119, for thirty-two thousand seven hundred dollars, to fall due and become payable April 1st, A. D. 1914; No. 120, for nineteen thousand nine hundred dollars, to fall due and become payable October 1st, A. D. 1914. The City Council of Wilmington shall, in making its annual appropriations for any of the fiscal years in which any of

the above series of bonds shall fall due, include in said appropriations a sum of money sufficient for the redemption of the same and any interest that may be due.

SEC. 3. The money borrowed under the provisions of this Act shall be used only for the purchase of water rights in the south long race in said city, contracted for at that price by the City Council of said city. Water rights only to be purchased.

Passed at Dover, April 3, 1883.

AN ACT to authorize "The Mayor and Council of Wilmington" to borrow a certain sum of money for the improvement of streets and avenues in the City of Wilmington, Delaware. 19 D. L. 432.

SECTION 1. That The Mayor and Council of Wilmington shall have power and authority and they are hereby ordered and directed, under an ordinance of the City Council to be passed with a concurrence of two-thirds of all the members thereof for the time being, to borrow a sum or sums of money not exceeding in the aggregate five hundred thousand dollars, which shall be appropriated, applied and expended for the following purposes, that is to say: For paving and improving the streets and avenues of the said City of Wilmington, to issue bonds of said city for the payment thereof, with interest, at such times and in such manner as the said City Council shall by ordinance prescribe and appoint. Authorized to borrow $500,000. To be expended on streets.

SEC. 2. That any and all moneys so borrowed under the authority of this Act shall be borrowed by the said "The Mayor and Council of Wilmington" at such times and in such amounts as the Board of Directors of the Street and Sewer Department of the City of Wilmington may direct; *provided, however,* that in no event shall the amount to be borrowed under the provisions of this Act exceed the sum of two hundred thousand dollars in any one year, and shall be applied and expended through and by the said Board of Directors of the Street and Sewer Department of the City of Wilmington, which shall have the supervision, management, direction and How to be borrowed. Sum to be borrowed not to exceed $200,000 in one year.

Expenditure of money.

control of and over the work and the expenditures of moneys as hereinbefore provided. All money borrowed as aforesaid for the purpose hereinbefore named shall be placed on special deposit by the said Board of Directors of the Street and Sewer Department of the City of Wilmington, and all orders or warrants for the payment of money drawn against this fund shall have specified thereon the words, "Paving and improving streets and avenues," and no warrant or order for the payment of money shall be drawn against such fund except such order or warrant is for payment for work done in the improving of the streets and avenues of the City of Wilmington as aforesaid.

Deposit of money borrowed.

Orders on fund.

Issue of bonds.

SEC. 3. That the bonds of the City of Wilmington authorized to be issued under the provisions of this Act shall be issued and payment made in the manner provided by an Act passed at Dover, February 9, 1855, entitled "An Act to provide a sinking fund for the payment of the city debt of Wilmington," and the various amendments and supplements thereto.

Passed at Dover, May 15, 1891.

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20 D. L. 160.

A FURTHER SUPPLEMENT to "An act to provide for Public Parks for the use of the citizens of Wilmington and its vicinity," passed March 13th, 1883.

* * * * * * * * * * * *

Mayor and Council of Wilmington may borrow not exceeding $50,000 for purchase of additions to parks.

SECTION 1. That the Mayor and Council of Wilmington are hereby empowered, under an ordinance or ordinances of the City Council to be passed with the concurrence of two-thirds of all the members thereof, to borrow a sum or sums not exceeding in the aggregate fifty thousand dollars to be applied and expended under the charge of the Board of Park Commissioners of the said city in the purchase or acquisition, in the manner authorized by the act to which this is a supplement, of lands to be used as additions to said parks.

Bonds, how issued.

SEC. 2. That the bonds of the City of Wilmington authorized to be issued under the provisions of this act shall be

issued, and payment made in the manner provided by an act passed at Dover, February 9th, 1855, entitled "An Act to provide a sinking fund for the payment of the city debt of Wilmington," and the various amendments and supplements thereto.

SEC. 3. That the amounts to be appropriated in pursuance of Section 4 of the act to which this is a supplement shall not be less than fifteen thousand dollars for any one fiscal year. Not less than $15,000 to be used in any one year.

Passed at Dover, April 27, 1895.

A FURTHER SUPPLEMENT to "An Act to provide for Public Parks for the use of the Citizens of Wilmington and its Vicinity," passed March 13, 1883. 20 D. L. 674.

* * * * * * * * * * * *

SECTION 1. That the Mayor and Council of Wilmington are hereby empowered, under an ordinance or ordinances of the City Council to be passed with the concurrence of two-thirds of all the members thereof, to borrow a sum or sums not exceeding in the aggregate $25,000.00 to be applied under the charge of the Board of Park Commissioners in the improvement of the parks, but not more than $15,000.00 shall be borrowed in any one calendar year. May borrow money. For improvement of parks.

SEC. 2. That the bonds of the City of Wilmington authorized to be issued under the provisions of this act shall be issued, and payment made in the manner provided by an act passed at Dover, February 9th, 1855, entitled, "An Act to provide a sinking fund for the City of Wilmington," and the various amendments and supplements thereto. Form, &c., of bonds.

Passed at Dover, April 5, 1897.

20 D. L. 163.

AN ACT to further amend Chapter 188 of Volume 18 of the Laws of Delaware and also to authorize "The Mayor and Council of Wilmington" to borrow a certain sum of money for public improvements in the City of Wilmington, Delaware.

SECTION 1[1]. * * * * * * * *

Mayor and Council shall borrow $250,000 and issue bonds for same.

SEC. 2. *And be it further enacted by the authority aforesaid,* That the Mayor and Council of Wilmington shall have power and they are hereby directed to borrow the sum of two hundred and fifty thousand dollars ($250,000) and to issue bonds of said city for the payment thereof with interest, said payment to be made at such times and in such manner as the City Council of the said City of Wilmington shall by ordinance prescribe and appoint, and the said sum of two hundred and fifty thousand dollars ($250,000) shall, in the discretion of the Board of Directors of the said Street and Sewer Department of the said City of Wilmington, be appropriated, applied and expended by the said board for the following public improvements, that is to say: For the opening, widening, paving and improvement of streets, avenues, lanes or alleys in the said City of Wilmington and for the construction of sewers and waterways in said city.

To be expended in improvements of streets and sewers.

To be borrowed in portions as the directors of the Street and Sewer Department may direct, not exceeding $125,000 in one year.

SEC. 3. That any and all moneys so borrowed under the authority of this act shall be borrowed by the said the Mayor and Council of Wilmington at such times and in such amounts as the Board of Directors of the Street and Sewer Department of the said City of Wilmington may direct; *provided, however,* that in no event shall the amount to be borrowed under the provisions of this act exceed the sum of one hundred and twenty-five thousand dollars ($125,000) in any one year and the same shall be applied and expended through and by the said Board of Directors of the Street and Sewer Department of the City of Wilmington, which shall have the supervision, management, direction and control over the said work and the expenditure of money necessary with respect thereto. All

1. Sec. 1 amending Chapter 188, Vol. 18, D. L.

moneys borrowed as aforesaid for the purposes hereinbefore mentioned shall be placed on special deposit by the said Board of Directors of the Street and Sewer Department of the said City of Wilmington, and no warrant or order for the payment of money shall be drawn against such fund except such order or warrant is for payment for work done upon and about the improvements provided for in this act. How kept on deposit. How applied.

Sec. 4. That the bonds of the City of Wilmington authorized to be issued under the provisions of this act shall be issued and payment made in the manner provided for in the act passed at Dover, February 9, 1855, entitled "An act to provide a sinking fund for the City of Wilmington," and the various amendments and supplements thereto. Payment, how provided for.

Sec. 5. That no reduction in the amount now payable by the Council to the Board of Directors of the Street and Sewer Department of the said City of Wilmington for their current and ordinary expenses as now provided by law shall take place before the said department receives such installment of the money directed to be borrowed by this act as it may properly demand. No reduction to be made in regular appropriation of Council till department receives installment of new loan.

Sec. 6. That all acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

Passed at Dover, April 30, 1895.

AN ACT authorizing and empowering "The Board of Public Education in Wilmington" to issue Certificates of Indebtedness for a sum not exceeding One Hundred and Fifty Thousand Dollars for the payment of the New High School and the buildings connected therewith; and the proper furnishing and equipment of the same. 22 D. L. 357.

* * * * * * * * * * * *

Section 1. That "The Board of Public Education in Wilmington" be and it is hereby authorized and empowered to issue certificates of indebtedness to an amount not exceed- Board of Public Education authorized to borrow

$150,000 for new High School building.

ing the sum of one hundred and fifty thousand dollars, for the purpose of paying the amounts now due or hereafter to become due, for or on account of the erection and completion of the new High School building and the buildings connected therewith and furnishing the same with the necessary furniture, apparatus and appliances.

Certificates of indebtedness.

SEC. 2. The said certificates of indebtedness shall bear interest at a rate not exceeding four per centum per annum, payable semi-annually from the day of the date thereof, and shall each be issued for the sum of one thousand dollars, and numbered from 1 to 150 inclusive.

How and when paid.

Fifteen of said certificates shall be paid off each and every year, in the order in which they are numbered, until all the said certificates are paid, out of the annual amount of money which the said board is authorized to expend yearly for new buildings.

How signed.

All the said certificates shall be signed by the President of the said Board and attested by the Secretary of the said Board, and have affixed thereto the common or corporate seal of the said "Board of Public Education in Wilmington."

Approved March 8, A. D. 1901.

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22 D. L. 358.

A FURTHER SUPPLEMENT to an Act entitled "An Act to provide for Public Parks for the use of the City of Wilmington and its Vicinity," passed March 13th, 1883.

Mayor and Council may borrow money to improve parks.

SECTION 1. That the Mayor and Council of Wilmington, upon recommendation of the Board of Park Commissioners, are hereby authorized to borrow a sum or sums not exceeding in the aggregate of fifty thousand dollars to be applied and expended under the charge of the Board of Park Commissioners of the said city for the purpose of improving the parks,

Amount of.

and a sum or sums not exceeding in the aggregate thirty thousand dollars for the purchase or acquisition, in the manner authorized in the Act to which this is a supplement, of lands to be used as additions to said parks.

Bonds, how issued.

SEC. 2. That the bonds of the City of Wilmington authorized to be issued under the provisions of this Act, shall be issued, and payment made in the manner provided by an "Act passed at Dover, February 9th, 1855, entitled 'An Act to provide a sinking fund for the payment of the city debt of Wilmington,'" and the various amendments and supplements thereto.

Approved March 21, A. D. 1901.

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22 D. L. 359.

AN ACT to authorize "The Mayor and Council of Wilmington" to borrow a certain sum of money for the elimination of Grade Crossings of Railroads and for the Improvement of Streets and Avenues and Construction of Sewers in the City of Wilmington, Delaware.

Mayor and Council to borrow $50,000 for abolition of grade crossings.

SECTION 1. That "The Mayor and Council of Wilmington" shall have power and authority, and they are hereby directed to borrow the sum of fifty thousand dollars and to issue bonds of the said city for the payment thereof with interest, said payment to be made at such times and in such manner as the said Council of the said City of Wilmington shall by ordinance prescribe and appoint, and the said sum of fifty thousand dollars shall, in the discretion of the Board of Directors of the Street and Sewer Department of the said City of Wilmington, be appropriated, applied and expended by the said board for the following public improvements, that is to say, for the abolition of grade crossings of railroads within the limits of the City of Wilmington, and for the opening, widening, paving and improving of streets, avenues, lanes or alleys and for the extension of the authorized sewer system provided for and in said City of Wilmington.

Methods of.

SEC. 2. That any and all moneys so borrowed under the authority of this Act shall be borrowed by the said "The Mayor and Council of Wilmington" at such times and in such amounts as the Board of Directors of the Street and Sewer Department of the said City of Wilmington may decide and direct. Provided, however, that in no event shall the amount to be borrowed under the provisions of this Act exceed the sum

of twenty-five thousand dollars in any one calendar year and the same shall be applied and expended through and by the said Board of Directors of the Street and Sewer Department of the said City of Wilmington, which shall have the supervision, management, direction and control over the said work and the expenditure of money necessary with respect thereto. All moneys borrowed as aforesaid for the purposes hereinbefore mentioned shall be placed on deposit by the said Board of Directors of the Street and Sewer Department of the said City of Wilmington, and no warrant or order for the payment of money shall be drawn against such funds except such order, or warrant is for payment for work done upon and about the improvement provided for this Act, provided, however, that it shall be discretionary with the Board of Directors of the Street and Sewer Department as to which improvement or improvements any or all of such money or moneys shall be applied.

Issue and payment of.

SEC. 3. That the bonds of the City of Wilmington, authorized to be issued under the provisions of this Act, shall be issued and payment made in the manner provided for in the Act passed at Dover, February 9, 1855, entitled "An Act to Provide a Sinking Fund for the City of Wilmington," and the various amendments and supplements thereto.

SEC. 4. That all acts or parts of acts inconsistent with the provisions of this Act be and the same are hereby repealed.

Approved March 14, A. D. 1901.

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22 D. L. 361.

AN ACT to authorize the Mayor and Council of Wilmington to borrow the sum of Fifty Thousand Dollars, and to issue Sinking Fund Bonds in payment thereof.

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Mayor and Council may borrow $50,000 for inadequate receipts from taxes.

SECTION 1. That the Mayor and Council of Wilmington shall have power and authority, and they are hereby directed to borrow the sum of fifty thousand dollars ($50,000) and to issue bonds of said city for the payment thereof with interest, said payments to be made at such times and in such manner as

the Council of the said City of Wilmington shall by ordinance prescribe and appoint, and of the said sum of fifty thousand dollars the sum of fifteen hundred and fifty dollars shall be appropriated, applied and expended by said Council in paying off and liquidating a certain bond and mortgage of said amount held by Elizabeth S. Taylor against the premises, in said City of Wilmington, known as Public School No. 9, and the remaining sum, or whatever amount may be necessary shall be applied and expended by the Council to the liquidation of the present floating indebtedness of the city.

Bond, how issued and paid.

SEC. 2. That the bonds of the City of Wilmington authorized to be issued under the provisions of this Act shall be issued and payment made in the manner provided for in the Act passed at Dover, February 9, 1855, entitled "An Act to Provide Sinking Fund for the City of Wilmington," and the various amendments and supplements thereto. The aggregate amount of the bonds of the said Mayor and Council of Wilmington outstanding and unpaid at the time of the passage of this Act, together with the amount of the bonds hereby authorized to be issued, shall be deemed and taken to be the authorized limit of the indebtedness of said corporation, and the faith and credit of said corporation shall be and are hereby pledged for the redemption and payment of said bonds as the same shall fall due and become payable.

SEC. 3. That all acts or parts of acts inconsistent with the provisions of this Act be and the same are hereby repealed.

Approved March 9, A. D. 1901.

AN ACT to Protect the Health of the Citizens of Wilmington. 22 D. L. 836.

Preamble.

Whereas, large quantities of refuse and sewerage are unavoidably discharged into the stream of water called Price's Run running through a portion of the Ninth ward of the City of Wilmington;

Preamble.

And Whereas, a public drain or trunk line sewer has become necessary for the drainage, growth and development of the Northern and Northeastern parts of said city;

* * * * * * * * * * * *

Mayor and Council to construct a trunk line sewer.

Direction of.

To construct branch of trunk line sewer.

Direction of.

SECTION 1. The Mayor and Council of Wilmington is hereby authorized, directed and required within three (3) years after the passage of this Act, through the agency of the Board of Directors of the Street and Sewer Department of the City of Wilmington, to lay and construct a trunk line sewer of such size as may be determined by the Board of Directors of the Street and Sewer Department, beginning at the intersection of Twenty-eighth and Monroe streets in the said city and running thence by such courses as the Board of Directors may deem most expedient to the Brandywine River; and also to lay and construct, a branch of said main trunk line sewer of such size as may be determined by the said Board of Directors of the Street and Sewer Department of the City of Wilmington, beginning at the intersection of Twenty-second and Locust streets in said city, and running thence by such courses as the said Board of Directors may deem most expedient to the intersection of Twenty-seventh and Bowers streets in said city, and also to acquire by purchase or condemnation all lands, water and water rights necessary for laying and constructing the said sewer.

Agreement with property owners.

Condemnation of property.

SEC. 2. In case the said Board of Directors shall not be able to agree with the owners of the said property for the purchase thereof, the said Board shall cause the same to be condemned for the use of the said city for the purposes aforesaid in like manner and by like proceedings as are now provided by law for the condemnation of land for extending, widening, laying out and opening streets within the said city. (*a*)

(*a*) See Secs. 116 and 117 of the Charter.

To borrow money.

Bonds for.

Interest.

SEC. 3. The Mayor and Council of Wilmington shall have power and authority, and they are hereby directed to borrow the sum of Ninety Thousand dollars ($90,000.00) and to issue bonds of said city for the payment thereof, with interest, said payment to be made at such times and in such amounts as the

City Council of the said City of Wilmington shall by ordinance prescribe and appoint, and the said sum of Ninety Thousand dollars ($90,000.00) shall be appropriated, applied and expended by the said Board toward the costs, expenses and damages which may be incurred in the purchase or condemnation of said property and in laying and constructing said sewers.

Application of money.

SEC. 4. That any and all moneys so borrowed under the authority of this Act shall be borrowed by the said Mayor and Council of Wilmington at such times and in such amounts as the Board of Directors of the Street and Sewer Department of the City of Wilmington may decide and direct, and the said money shall be applied and expended through and by the Board of Directors of the Street and Sewer Department of the City of Wilmington, which shall have entire supervision, management, direction and control over said work and the expenditure of money necessary with respect thereto. All moneys borrowed as aforesaid, for the purposes hereinbefore mentioned, shall be placed on special deposit by the said Board of Directors of the Street and Sewer Department of the City of Wilmington, and no warrant or order for the payment of money shall be drawn against such funds except such order or warrant is for the purchase or condemnation of said property or for the work done upon or about the construction of said sewers.

Board of Directors to supervise and control work, and expenditure of money.

SEC. 5. That the bonds of the City of Wilmington, authorized to be issued under the provisions of this Act, shall be issued and payment made in the manner provided by the Act passed at Dover, February 9th, 1855, entitled "An Act to Provide a Sinking Fund for the city of Wilmington" and the various amendments and supplements thereto.

Bonds issued and paid in accordance with provisions of Act, entitled "An Act to Provide a Sinking Fund for the City of Wilmington."

SEC. 6. That nothing in this Act shall be so construed as to relieve the owners of any property abutting on any part of the sewers provided for in this Act, from liability for the costs and charges which may be laid and levied upon them as provided for by law for the opening and maintaining of all public drains and sewers within the said City of Wilmington.

Property owner not exempt from other liability.

SEC. 7. That all Acts or parts of Acts inconsistent with the provisions of this Act, be and the same are hereby repealed.

Approved March 26, A. D. 1903.

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22 D. L. 833.

AN ACT to Authorize the Mayor and Council of Wilmington to borrow the sum of Two hundred thousand dollars for the use of the Board of Water Commissioners of said City.

Mayor and Council of Wilmington to borrow $200,000.

SECTION 1. The Mayor and Council of Wilmington shall have power and authority, and is hereby directed to borrow, as hereinafter provided, the sum of Two hundred thousand dollars, and to issue bonds to be prepared and printed or engraved under the supervision of the Board of Water Commissioners, of the said The Mayor and Council of Wilmington for the payment thereof with interest. Said bonds to be signed by the Mayor of the said city, and under the seal of the said city, and countersigned by the City Treasurer and City Auditor in the same manner as other city bonds; and a record thereof shall be made and kept by the City Auditor, the City Treasurer, and by the Board of Water Commissioners.

To issue bonds.

How signed.

Record of.

SEC. 2. Whenever in the judgment of the said Board of Water Commissioners it shall be necessary to issue by resolution of the Board any or all of the said bonds, they shall cause the same to be prepared and delivered to the Mayor and City Treasurer for execution as aforesaid.

To be delivered to Mayor and City Treasurer.

Bonds may be either registered or coupon bonds.

Denomination.

Payable.

Redemption of bonds.

SEC. 3. Said bonds may be either registered or coupon bonds, as the said Board of Water Commissioners may determine, and shall be of the denomination of one thousand dollars, each, and shall bear interest at a rate not to exceed four per centum per annum. Said bonds shall be made payable at the expiration of twenty years from the date thereof and may contain a provision for the redemption thereof by the said Board of Water Commissioners at any time after the expiration of five years from the date thereof, at a premium not to exceed five per cent. Said bonds shall also be liable to be redeemed at their face value at any interest bearing period, as hereinafter provided.

Bonds payable at Union National Bank of Wilmington.

SEC. 4. The said bonds, principal and interest shall be payable at the Union National Bank of Wilmington, Delaware, out of money from time to time appropriated for that purpose by the said Board of Water Commissioners. The said Board of Water Commissioners is hereby authorized and directed to pay the interest on the said bonds to the said Union National Bank of Wilmington, Delaware, when and as the same shall become due; and the said Board of Water Commissioners is further authorized and directed to pay and redeem at the expiration of the fifth year from the date of the said bonds, fifteen of said bonds at par, and to pay and redeem at the expiration of each and every year thereafter, an additional fifteen of said bonds until the twentieth year when the said Board of Water Commissioners shall pay and redeem the balance of said bonds.

Manner of redemption of bonds.

The said Board of Water Commissioners is hereby authorized and empowered to apply to the payment of the interest and principal on said bonds, any revenue coming into their hands from the Water Works of the City of Wilmington. The bonds to be redeemed at any time shall be selected by the Board of Water Commissioners by an impartial drawing. Any and all bonds redeemed shall be forthwith cancelled by the City Treasurer and City Auditor, and shall not again be reissued.

Date and number of bonds.

SEC. 5. All of the said bonds shall bear the same date and shall be numbered from No. 1 to No. 200 inclusive. If coupon bonds shall be issued, the coupons shall bear the engraved signature of the Treasurer of the said city. Any matured coupons shall be detached from the bonds by the City Treasurer and destroyed before delivery to the purchaser or purchasers thereof.

Negotiation of bonds.

SEC. 6. Said bonds may be sold when and as the said Board of Water Commissioners shall determine, and until sold shall remain in the custody of the City Treasurer. Whenever in the judgment of the said Board of Water Commissioners it shall seem desirable to sell any or all of the said bonds, the said Board of Water Commissioners may sell and dispose of

the same on the most advantageous terms possible after having advertised the same in the public press, but no commission or other compensation shall be charged or paid to any member of said Board for effecting the sale or negotiation of said bonds.

Disposition of money from sale of bonds.

SEC. 7. Any money received from the sale of any or all of the said bonds shall be deposited by the City Treasurer to the credit of the Board of Water Commissioners in a separate account, and payments therefrom shall be made in the same manner as other payments by the Board of Water Commissioners, provided that no part of the money thus obtained shall be used by the said Board of Water Commissioners for any purpose other than the construction, erection and equipment of the new reservoir to be located in Brandywine Hundred, New Castle County, to be known as the William T. Porter Reservoir, and for the purchase, construction and equipment of the pipes, mains, filter plant, clear water basin, buildings and machinery proper for the construction, completion and operation of the said reservoir in connection with the Water Works of the City of Wilmington.

Bonds payable in gold.

SEC. 8. The principal and interest of the said bonds shall be payable in gold coin of the United States of America, equal in weight and fineness to the present standard, and shall contain such provisions not inconsistent with the requirements of this Act, as the said Board of Water Commissioners shall determine.

Expense of preparation of bonds paid by Board of Water Commissioners.

SEC. 9. All charges and expenses connected with the preparation of the said bonds, and of the sale thereof, shall be paid by the said Board of Water Commissioners by money to be appropriated by them for that purpose.

Approved March 31, A. D. 1903.

A FURTHER SUPPLEMENT to an Act entitled "An Act to provide for Public Parks for the use of the City of Wilmington and its vicinity," passed March 13th, 1883. 23 D. L. 275.

* * * * * * * * * * * *

SECTION 1. That the Mayor and Council of Wilmington, upon recommendation of the Board of Park Commissioners, are hereby authorized to borrow a sum or sums not exceeding in the aggregate twenty thousand dollars to be applied and expended under the charge of the Board of Park Commissioners of the said city for the purpose of improving the parks, and a sum or sums not exceeding in the aggregate thirty thousand dollars for the purchase or acquisition, in the manner authorized in the Act to which this is a supplement, of lands to be used as additions to said parks. City authorized to borrow money to purchase additional lands for parks.

SEC. 2. That the bonds of the City of Wilmington authorized to be issued under the provisions of this Act, shall be issued, and payment made in the manner provided by an "Act passed at Dover, February 9th, 1855, entitled 'An Act to provide a sinking fund for the payment of the city debt of Wilmington,'" and the various amendments and supplements thereto. Bonds authorized.

Approved March 29, A. D. 1905.

AN ACT to authorize "The Mayor and Council of Wilmington" to borrow a certain sum of money for the elimination of grade crossings of railroads and for the improvement of streets and avenues and construction of sewers in the City of Wilmington, Delaware. 23 D. L. 276.

* * * * * * * * * * * *

SECTION 1. That "The Mayor and Council of Wilmington" shall have power and authority, and they are hereby directed to borrow the sum of one hundred thousand dollars and to issue bonds of the said city for the payment thereof with interest, said payment to be made at such times and in such manner as the said Council of the said City of Wilmington shall by ordinance prescribe and appoint, and the said sum of City authorized to borrow money to abolish grade crossings.

one hundred thousand dollars shall, in the discretion of the Board of Directors of the Street and Sewer Department of the said City of Wilmington, be appropriated, applied and expended by the said board for the following public improvements, that is to say, for the abolition of grade crossings of railroads within the limits of the City of Wilmington, and for the opening, widening, paving and improving of streets, avenues, lanes or alleys and for the extension of the authorized sewer system provided for and in said City of Wilmington.

Money when to be borrowed.

Sec. 2. That any and all moneys so borrowed under the authority of this Act shall be borrowed by the said "The Mayor and Council of Wilmington" at such times and in such amounts as the Board of Directors of the Street and Sewer Department of the said City of Wilmington may decide and direct. Provided, however, that in no event shall the amount to be borrowed under the provisions of this Act exceed the sum of fifty thousand dollars in any one calendar year and the same shall be applied and expended through and by the said Board of Directors of the Street and Sewer Department of the said City of Wilmington, which shall have the supervision, management, direction and control over the said work and the expenditure of money necessary with respect thereto. All moneys borrowed as aforesaid for the purposes hereinbefore mentioned shall be placed on deposit by the said Board of Directors of the Street and Sewer Department of the said City of Wilmington, and no warrant or order for the payment of money shall be drawn against such funds except such order, or warrant is for payment for work done upon and about the improvement provided for this Act, provided, however, that it shall be discretionary with the Board of Directors of the Street and Sewer Department as to which improvement or improvements any or all of such money or moneys shall be applied, provided, however, that not more than one-third of the moneys so borrowed under the authority of this Act shall be applied for the extension of sewers.

Proviso.

Limit of amount to be borrowed in any year.

How expended.

Money to whose credit deposited.

How drawn on.

Proviso.

Proviso.

Limit of amount to be used on sewers.

Bonds of city to be issued under what Act.

Sec. 3. That the bonds of the City of Wilmington, authorized to be issued under the provisions of this Act, shall be

issued and payment made in the manner provided for in the Act passed at Dover, February 9, 1855, entitled "An Act to Provide a Sinking Fund for the City of Wilmington," and the various amendments and supplements thereto.

SEC. 4. That all Acts or parts of Acts inconsistent with the provisions of this Act be and the same are hereby repealed.

Approved March 6, A. D. 1905.

AN ACT to authorize the Mayor and Council of Wilmington to borrow Eight Hundred Thousand Dollars for the purpose of paying off any Floating Indebtedness and Current Liability in connection with the Water Works System of the City of Wilmington, and for defraying the cost of acquiring real estate and water rights; and for the completion, construction, erection and equipment of new reservoirs, filter plants, pumping stations, pumping engines, pipes, mains and other appurtenances necessary for the completion and operation of the reservoir and filtration plants in connection with the extension of the Water Supply System of the City of Wilmington.

24 D. L. 357.

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SECTION 1. That The Mayor and Council of Wilmington, be and is hereby authorized and empowered to borrow upon the faith and credit of the City of Wilmington, as hereinafter provided, a sum not exceeding eight hundred thousand dollars to be expended for the purpose of paying off any floating indebtedness and current liability in connection with the Water Works System of the City of Wilmington, and for defraying the cost of acquiring real estate and water rights; and for the completion, construction, erection and equipment of new reservoirs, filter plants, pumping stations, pumping engines, pipes, mains and other appurtenances necessary for the completion and operation of the Water Supply System of the City of Wilmington; and for the purpose of securing the payment of such sum, to issue bonds in denominations of one thousand dollars each and bearing such rate of interest not exceeding

City authorized to borrow $800,000.

Funds to be used for what purposes.

To issue bonds.

Rate of interest.

four and one-half per centum per annum as The Council of The Mayor and Council of Wilmington may deem expedient. The interest upon said bonds shall be payable semi-annually in each and every year from the date of issue thereof.

Classification of bonds.

SEC. 2. Said bonds shall be divided into seventeen classes and shall be paid at their face value as follows:

Class.	Amount.	Date of Maturity.
A	$30,000	1910
B	$30,000	1911
C	$30,000	1912
D	$30,000	1913
E	$40,000	1914
F	$40,000	1915
G	$40,000	1916
H	$40,000	1917
I	$50,000	1918
J	$50,000	1919
K	$50,000	1920
L	$50,000	1921
M	$60,000	1922
N	$60,000	1923
O	$60,000	1924
P	$70,000	1925
Q	$70,000	1926

City Council to prepare bonds.

SEC. 3. Said bonds shall be prepared under the supervision of The Council of The Mayor and Council of Wilmington and shall be signed by the Mayor of the City of Wilmington, and under the seal of said city, and shall be countersigned by the City Treasurer and City Auditor of said city in the same manner as other city bonds; and it shall be the duty of such officers to execute said bonds when directed by The Council to do so. It shall be the duty of the City Auditor, the City Treasurer, and the Board of Water Commissioners to keep a record of said bonds.

How executed.

Record of bonds.

Bonds when may be sold.

SEC. 4. Said bonds, or any part thereof, may be sold when and as The Council of The Mayor and Council of Wil-

mington shall determine, and until sold shall remain in the custody and possession of the City Treasurer. Whenever the Board of Water Commissioners of the City of Wilmington shall deem it necessary to have "The Council" sell any or all of said bonds, the said Board shall by resolution request, "The Council" to issue any portion or all of said bonds, and "The Council" of The Mayor and Council of Wilmington if it shall deem it advisable may sell and dispose of the same on the most advantageous terms possible, after having advertised the same in the public press at least once each week for at least two weeks. No commission or other compensation shall be charged or paid to any member of The Council for affecting the sale or negotiation of said bonds.

Bonds, where payable.

SEC. 5. Said bonds, principal and interest, shall be payable at the Union National Bank at Wilmington, Delaware, in gold coin of the United States of America equal in weight and fineness to the present standard, out of the money from time to time appropriated for that purpose by The Council of the City of Wilmington, and the said Council is hereby authorized and directed to pay the interest on said bonds to the said Union National Bank when and as the same shall become due, and to pay said bonds when and as the respective classes mature in accordance with the schedule in Section 2 of this Act. The said Council is hereby authorized and directed to apply to the payment of the interest and principal on said bonds, any money coming into its possession from the revenues of said city.

When payable.

Funds deposited to whose credit.

SEC. 6. All of said bonds shall bear the same date and shall be numbered from 201 to 1000 inclusive. The money received from the sale of said bonds shall be deposited by the City Treasurer to the credit of the Board of Water Commissioners in a separate account and payments therefrom shall be made in the same manner as other payments are made by said Board of Water Commissioners. No part of the money thus obtained and deposited to the credit of the Board of Water Commissioners shall be used by said Board for any purpose other than: First—paying off any floating indebtedness and current liability in connection with the Water Works System

Drafts thereon, how made.

Purposes funds may be applied to.

of Wilmington; and second—for defraying the cost of acquiring real estate and water rights and for the completion, construction, erection and equipment of new reservoirs, filter plants, pumping stations, pumping engines, pipes, mains and other appurtenances necessary for the completion and operation of the Water Supply System of the City of Wilmington; provided that the purchasers or holders of said bonds shall not be bound to see to, or be affected by the application or misapplication of any of said money, realized from the sale of said bonds.

Proviso. Purchasers not bound to see to application of funds.

Form of bonds.

SEC. 7. Said bonds shall contain such provisions not inconsistent with the requirements of this Act as The Council of The Mayor and Council of Wilmington shall determine.

Costs to be paid by Council.

SEC. 8. All charges and expenses connected with the preparation of said bonds, and the sale thereof shall be paid by The Council of The Mayor and Council of Wilmington by money to be appropriated by it for that purpose.

Approved March 29, A. D. 1907.

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24 D. L. 361.

AN ACT to authorize "The Mayor and Council of Wilmington" to borrow money for the curbing, guttering, grading, widening, paving and improving of streets and avenues and the building of sewers and conduits, in the City of Wilmington, Delaware.

* * * * * * * * * * * * *

City authorized to borrow money for curbing, &c., streets.

SECTION 1. That the "Mayor and Council of Wilmington" shall have power and authority to borrow money in such amounts and at such times as they shall deem necessary to be borrowed and, shall by ordinance prescribe and appoint, for the curbing, guttering, grading, widening, paving and improving of the streets, avenues, lanes or alleys and the building of sewers and conduits in the City of Wilmington, Delaware, and to issue the bonds of the said city in payment therefor with interest; the moneys so borrowed to be paid into the city treasury and upon the receipt of the same by the City Treasurer, he shall deliver the amount of the same to the Board of Directors

Money to be paid to City Treasurer who shall deliver to Board of Directors of Street and Sewer Department.

of the Street and Sewer Department of the said City of Wilmington, which Board shall have supervision, management, direction and control over the said work and the expenditure of the money necessary with respect thereto. All moneys borrowed as aforesaid for the purposes hereinbefore mentioned shall be placed on deposit by the Board of Directors of the Street and Sewer Department of the said City of Wilmington and no warrant or order for the payment of money shall be drawn against said funds except such order or warrant is for payment for work done or material or implements used upon and about the improvement or improvements provided for in this Act or prescribed in the ordinance of Council providing the sum to be borrowed.

How deposited.

How drawn on.

Provided, however, that the said Board of Directors of the Street and Sewer Department of the said city, shall, before any moneys are so borrowed under the authority of this Act, prepare and present to the Council of said City of Wilmington, a list showing the location and the estimated costs of improvements as far as practicable which in the judgment of said Board of Directors of the Street and Sewer Department should be made. The Council of said City of Wilmington shall fix the amount to be borrowed, basing the amount on the estimates submitted by said Board of Directors of the Street and Sewer Department.

Proviso. Duty of said Board of Street and Sewer Department to furnish list of proposed improvements to Council.

Council to fix amount to be borrowed.

SEC. 2. That the bonds of the City of Wilmington, authorized to be issued under the provisions of this Act, shall be issued and payment made in the manner provided for in the Act passed at Dover, February 9th, 1855, entitled "An Act to provide a Sinking Fund for the City of Wilmington," and the various amendments and supplements thereto.

Bonds how issued.

SEC. 3. That all Acts or parts of Acts inconsistent with the provisions of this Act be and the same are hereby repealed.

Approved March 4, A. D. 1907.

16 D. L. 187.

AN ACT to exempt from taxation the bonds of the City of Wilmington.

Bonds of the City of Wilmington exempt from all taxation.

SECTION 1. That all bonds of the City of Wilmington which have heretofore been issued, or which shall hereafter be issued under any ordinance of said city, and by authority of any law of this State, shall be exempt from taxation under any law of this State; and from and after the passage of this Act no county tax shall be collected from any persons holding the bonds of said city for or on account of said bonds.

SEC. 2. All laws or parts of laws inconsistent herewith are hereby repealed.

Passed at Dover, March 27, 1879.

CHAPTER XIV.

ACTS IN RELATION TO EXEMPTIONS FROM TAXATION.

	Page		Page
1. Act Exempting United States Custom House.....	485	6. Act Exempting Lands of Charitable Homes of Refuge	490
2. Act Exempting Certain Lands of the United States	486	7. Act Exempting Lands of Charitable Day Nurseries	491
3. Act Exempting all Public Schools	486	8. Act Exempting Lands of Charitable Young Women's Christian Associations	491
4. Act to Classify and Exempt Certain Real Estate.	487	9. Act Exempting Lands of Corporations Engaged In Settlement Work	492
5. Act Exempting Lands of Charitable Homes for Incurables	489		

AN ACT exempting from taxation certain real estate located in the City of Wilmington, purchased by the United States Government for the purpose of erecting a Custom House thereon. 11 D. L. 33.

Whereas, The Congress of the United States at its last session appropriated the sum of twenty-five thousand dollars for the purchasing of a site and the construction of a suitable building at the City of Wilmington, in this State, for a Custom House, Post Office, court rooms and other offices of the United States, and for furnishing the same, upon condition that the General Assembly of this State should exempt the said site or lot and building from city and other taxes. * * * * * Preamble.

SECTION 1. That whenever the Government of the United States shall complete the purchase of the said lot of ground situate at the southeast corner of King street, the boundaries whereof are particularly described in the preamble to this Act, the same together with the buildings and improvements which may thereafter be erected thereon, shall not be subject to city, county or State taxes, but the same shall be held and enjoyed Ground upon which the Post Office stands exempted from all taxes.

by the United States for the purpose aforesaid, free and exempt from all manner of taxation whatsoever.

Passed at Dover, February 10, 1853.

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17 D. L. 605.

AN ACT granting consent of the State of Delaware to the purchase by the United States of certain lands for the purpose of the erection of Government Buildings at Wilmington, and ceding jurisdiction over the same.

Consent of State for purchase by U. S. of certain lands in Wilmington for the erection of public buildings.

SECTION 1. That the consent of the State of Delaware is hereby given to the purchase by the United States of one or more pieces of land situated in the City of Wilmington, not exceeding three acres in quantity, on which to erect Government Public Buildings for the accommodation of the United States Courts, post-office and other government offices; and the said United States shall have, hold, use, occupy and own the said land or lands when purchased and exercise jurisdiction and control over the same and every part thereof, subject to the restrictions hereinafter mentioned.

* * * * * * * * * * *

When jurisdiction to vest.

SEC. 4. That the jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to said land or lands by purchase or grant; and so long as the said land or lands shall remain the property of the said United States when acquired as aforesaid, and no longer, the same shall be and continue exonerated from all taxes, assessments and other charges which may be levied or imposed under the authority of this State.

SEC. 5. That this Act shall take effect immediately.

Passed at Dover, April 10, 1885.

AN ACT in relation to public schools.

* * * * * * * * * * *

Public schools exempt from all taxation.

SEC. 16. That all public school grounds and public school buildings maintained at public expense within this State shall

be exempt (a) from county, town, municipal, water, street and sewer and all other taxes.

(a) Article 10, Section 3, of the Constitution also provides "that all real and personal property used for school purposes, where the tuition is free, shall be exempt from taxation and assessment for public purposes."

Lore, C. J.: —"the Court have reached the conclusion that as the cases stated show the real property referred to therein is being used for school purposes where the tuition is free, it comes within the constitutional exemption (Sec. 3, Art. 10, Constitution of 1897) and is, therefore, exempt from taxation."

Rettew vs. St. Patrick's Church, 4 Penn. 593 at 600. (yr. 1902)

Passed at Dover, April 27, 1893.

AN ACT to classify Real Estate for the purposes of Municipal Taxation, and to exempt certain lands from Municipal Taxation within the City of Wilmington. 21 D. L. 244.

* * * * * * * * * * * *

Section 1. It shall be the duty of the Board of Assessment, Revision and Appeals, in the City of Wilmington, as at present constituted, immediately after the annual assessment is made in each year for city and school purposes in said city, to classify the real estate so assessed in such a manner as to discriminate between the rural or suburban, and built up portion of said city; and they are hereby required to certify to the Council of said city, on or before the first day of June in each year, the valuation of the built up portions and the valuation of the rural or suburban property respectively; and it shall be the duty of the Council in determining the rate of taxation for each year to levy a tax upon said rural or suburban property equal to one-half of the highest rate of tax required to be levied for said year; so that upon the real estate assessed in said city there shall be two rates of taxation. (a)

Classification of real estate.

Certificate of valuation.

Rate of tax.

(a). This section is set out in full in the case below cited, on page 221. The Court held, under this Act, the lowest rate of taxation was one-half the full rate, and all other acts allowing a rate less than one-half the full rate, were repealed.

Spruance, J.: "The Act of 1898 in making a general classification of real estate for the purposes of taxation, fixed the rate of tax upon rural or suburban property at double the rate allowed by the Act of 1897 upon property of the same character. It is impossible to believe that the Legislature in passing said Act of 1898 intended that thereafter property of the same character situate in different parts of the city should be taxable at different rates. We are, therefore, of the

opinion that the said Act of 1897 was inconsistent with the said Act of 1898, and was, as such, repealed by the latter Act.'' Act of 1898.

Monaghan vs. Lewis, 5 Penn. 218 at 223-4. (yr. 1905)

Monaghan vs. Lewis, 4 Penn. 364 at 365. (yr. 1903) Decision by *Lore, C. J.*

Appeals.

During the sittings of said Board of Assessment, Revision and Appeals in the month of April of each year any person interested shall be privileged to appeal to said Board as to the classification of any real estate under this act and it shall be the duty of said Board to hear such appeal and to determine the same according to justice and right.

Duty of Assessors.

SEC. 2. It shall be the duty of the Assessors of said city to make assessments of property in conformity with the provisions of this act and to designate on their respective assessment lists the class in which such property shall be rated.

Exemption of marsh and meadow.

SEC. 3. That all marsh and meadow lands within the limits of the City of Wilmington that are protected from overflow by the tides by banks at the expense of the owners thereof, whereon no houses or buildings are erected, be and the same are hereby declared to be exempt from all taxes, assessments, burdens or impositions whatsoever for municipal purposes.

Marsh and meadow filled in exempted.

SEC. 4. That any marsh or meadow land, as aforesaid which has been filled in, or which may hereafter be filled in or raised above highwater, so as to become high and fast land; the expense of the same being borne by the owner, shall be exempt from all taxes, assessments, burdens or impositions whatsoever for municipal purposes for a period of ten years from the time said lands become high and fast lands.

Marsh and meadow on which manufacturing establishment is located exempt.

SEC. 5. That any marsh or meadow land, as aforesaid upon which any manufacturing establishment or industrial improvement, for the employment of labor, (*a*) shall be erected after the passage of this act shall for a period of ten years after the same shall be erected, be exempt from all taxes, burdens, assessments or impositions whatsoever for municipal purposes.

(*a*) The object of the above section is to encourage the erection and

operation of manufacturing plants; and insolvency of the same does not necessarily terminate the exemption.

In the case below cited, the language was as follows:

"A provision of the Charter of the town of Newark contained the following provision: "All manufacturing plants now, or hereafter, established within the limits of said town, employing ten or more employees, shall be exempt from town taxation for the term of ten years." 18 D. L. Ch. 175, Sec. 31. (p. 162). The following, bearing upon the same, is taken from the syllabus:

"An exemption from taxation of a manufacturing plant is not terminated by the insolvency of the company owning it, and the appointment of a receiver, and a judicial sale to a purchaser who makes an effort to keep within the lines prescribed. There must be an actual abandonment of the works for manufacturing purposes." (159)

Lore, C. J.: "The plant has been devoted to manufacturing purposes only, and is not shown to have been used for any other purpose. The suspension of work in the plant was by reason of want of funds to carry on the business."

Bradford vs. Mote, 2 Marv. 159 at 165. (yr. 1895)

Exemption of marsh and meadow used by manufacturing establishments.

SEC. 6. That any marsh or meadow land, as aforesaid or where the same has been filled in or raised, as aforesaid, so as to become fast and high land, upon which any manufacturing establishment or industrial improvement, for the employment of labor has been erected within two years prior to the passage of this act, or which may hereafter (a) be erected, shall, for a period of ten years after the passage of this act, be exempt from all taxes, assessments, burdens or impositions whatsoever for municipal purposes.

SEC. 7. That all acts or parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed, and especially an act passed at the present session of the General Assembly entitled "An Act to classify certain lands within the City of Wilmington for the purposes of Municipal Taxation."

Approved May 20, A. D. 1898.

AN ACT to amend an Act entitled "An Act to revise and consolidate the Statutes relating to the City of Wilmington," being Chapter 207, Volume 17, Laws of Delaware, exempting from taxation the lands and tenements of all Charitable Homes for Incurables. 22 D. L. 843.

* * * * * * * * * * * *

Charitable institutions of value of $15,000 exempt from taxation.

SECTION 1. That all lands and tenements to the value of Fifteen thousand dollars owned by any corporation (*a*) or association, which are used wholly or in part for Charitable Homes for Incurables, shall be and the same are hereby declared to be exempt from all taxes, assessments, burdens or impositions for municipal purposes.

Approved April 7, A. D. 1903.

(*a*) This Act, it will be noticed, reads, "*any* corporation" used for such work, shall be exempt. The few acts following this one contain similar language. This *general* phraseology brings this Act (and others of similar language), within the general exemption clause of the Constitution, thus making it, and them, valid. This clause is as follows:

—"but the General Assembly may, by general laws, exempt from taxation such property as in the opinion of the General Assembly will best promote the general welfare." Art. VIII, Sec. 1, Constitution 1897. Prior to the Constitution of 1897, the exemptions were, practically, all *special* exemptions, and the Constitution of 1897, proprio vigore, repealed them.

Sayers vs. W. & N. R. R. Co., 3 Penn. 249 at 258. (yr. 1901)
Monaghan vs. Lewis, 5 Penn. 218 at 224. (yr. 1905)
In the Monaghan case the Court said at p. 224:
Spruance, J.: "The said provision of the Constitution was self-executing, and proprio vigore annulled the said Act of 1897, which was inconsistent and in direct conflict with the said provision," (viz: Art. 8, Sec. 1), meaning that the Constitution *itself* repealed all special exemption Acts.

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22 D. L. 844.

AN ACT to amend an Act entitled "An Act to revise and consolidate the Statutes relating to the City of Wilmington," being Chapter 207, Volume 17, Laws of Delaware, exempting from taxation the lands and tenements of Charitable Homes and Homes of Refuge for Reformed Women.

* * * * * * * * * * * *

Exemption from taxation of charitable institutions for reformed women.

SECTION 1. That the lands, tenements and property not exceeding in value in any one instance the sum of twenty-five thousand dollars, of all incorporated homes or houses of refuge for reformed women, maintained in the said City of Wilmington by charity, shall be exempt from all municipal taxation, both as to city and school taxes.

SEC. 2. All acts or parts of acts inconsistent herewith are hereby repealed.

Approved March 24, A. D. 1903.

AN ACT to amend an Act entitled "An Act to revise and consolidate the Statutes relating to the City of Wilmington," being Chapter 207, Volume 17, Laws of Delaware, exempting from municipal taxation the lands and tenements of all Charitable Day Nurseries for Babies. 23 D. L. 271.

* * * * * * * * * * * *

Property of certain charitable institution exempt from taxation.

SECTION 1. That all lands and tenements to the value of twenty-five thousand dollars owned by any corporation or association maintained by charity which are used wholly or in part as Day Nurseries for Babies, shall be and the same are hereby declared to be exempt from taxes, assessments, burdens or impositions whatsoever for municipal purposes.

SEC. 2. All Acts or parts of Acts inconsistent herewith are hereby repealed.

Approved March 9, A. D. 1905.

AN ACT to amend an Act entitled "An Act to revise and consolidate the Statutes relating to the City of Wilmington," being Chapter 207, Volume 17, Laws of Delaware, exempting from taxation for municipal purposes, the lands and tenements of all non-sectarian Charitable Young Women's Christian Associations. 23 D. L. 272.

* * * * * * * * * * * *

Property of certain charitable corporations exempt from taxation.

SECTION 1. That lands and tenements of the value of twenty-five thousand dollars, owned by any corporation or association maintained by charity in this State, which are used in whole or in part for non-sectarian Charitable Young Women's Christian Association, shall be and the same are hereby declared to be exempt from all taxes, assessments, burdens or impositions for municipal purposes.

SEC. 2. All Acts or parts of Acts inconsistent herewith are hereby repealed.

Approved March 9, A. D. 1905.

AN ACT to Exempt from Taxation the Lands, Tenements and Property of Corporations Organized for the Purpose of Carrying on "Settlement Work."

* * * * * * * * * * * *

Exemption from taxation.

SECTION 1. That the lands, tenements and property of all corporations of this State, incorporated, organized and carried on for the purpose of "Settlement Work," and maintained in whole or in part by charity, shall be exempt from any and all county and municipal taxes, during such time and to the extent that such lands, tenements and property shall be actually used (*a*) by such corporations in such "Settlement Work," provided that said exemption shall not apply to any lands, tenements and property owned by such corporations as investments and not actually used by such corporations in such "Settlement Work."

Approved April 15, A. D. 1909.

(*a*) The phrase here used is: "actually used." The intent of all exemption acts is, that the exemption shall last only while the lands or buildings are being used for the purpose for which exemption was granted, but insolvency does not, in itself, end the exemption. See Sec. 5, "a," p. 489 this volume.

CHAPTER XV.

ACTS IN RELATION TO CITY RAILWAYS.

		Page
1.	Act Incorporating the Wilmington City Railway Company	493
2.	Act Supplementary to Foregoing Act	498
3.	Act Incorporating the Front and Union Street Railway Company	498
4.	Act Supplementary to Foregoing Act	504
5.	Act Incorporating the Eighth Street Passenger Railway Company	504
6.	Act Prohibiting Railway Tracks on Ninth Street West of Market	508
7.	Act Prohibiting Railway Tracks on Tenth Street West of West Street	509

AN ACT to incorporate the Wilmington City Railway Company. 12 D. L. 426.

* * * * * * * * * * *

Company authorized to construct and maintain city railway.

SEC. 7. (*a*) It shall be the business of the said corporation to locate, construct, operate and maintain a city railway (*b*) for the carriage of passengers and freight for compensation within the City of Wilmington, with the privilege also of extending such railway to any place or places outside of the city, not more than six miles distant from the city limits. The said corporation shall have the exclusive (*c*) right and privilege of locating, constructing, operating and maintaining a city railway within the city limits. (*d*) The said railway shall commence near the depot at the Philadelphia, Wilmington and Baltimore Railroad Company, and thence, shall extend to the intersection of Front street and Market street (*e*) by the street or streets most directly leading thereto; thence, through and along Market street to its intersection with Tenth street; thence, through

Railway to commence, where.

Course.

Note.—The articles of incorporation of railway companies under the provisions of the General Incorporation Act are not included herein.

and along Tenth street and Delaware avenue to such place or places as the directors may select either within or without the city, not being more than six miles distant from the city limits. The railway, or any part of the same to be constructed under this section, may be laid with either a single or double track, or at any time altered from the one to the other as the directors shall deem expedient, and with all sidings, turnouts, switches and connections necessary for the proper working of said railway, and for locating, constructing, operating and maintaining the said railway the company shall have power to use and occupy so much of any street, avenue, highway or turnpike within said city as may be necessary, and for locating, constructing, operating and maintaining any part of said railway outside of the city limits the company may use and occupy any public road of New Castle County, or if deemed expedient by the directors, may use and occupy any land other than a public road, the title to such land being first acquired as hereinafter directed; *provided*, that the gauge of said railway shall be five feet two inches, and that said railway shall be conformed as near as may be to the grades which now are or hereafter may be established for any street over which the same shall be located; *and provided also*, that the said company shall be required to keep the pavements in good repair within the rails of their tracks, and for the distance of three feet on each side thereof, and shall not interfere with the proper and free access to the culverts, water and gas pipes in the said city; *and provided also*, that steam power shall not be used to propel the cars of the said company unless with the consent of the City Council (*f*) and that in order to prevent accidents suitable bells shall be attached to the horses drawing the cars. The said railway may cross any track of any railroad company (*g*) now incorporated or hereafter to be incorporated; *provided*, that it conform to the grade of the track to be crossed.

Terminus.

Single or double track.

Power to use and occupy streets.

Public roads.

Other land.

Proviso.

Guage of the road.

How constructed.

Steam power not to be used without consent of City Council.

(*a*) This section is set out verbatim, and discussed in the case of Wil. C. Ry. Co. vs. Wil. & B. S. Ry. Co., 8 Del. Ch. 468 at 488, 511, 513. (yr. 1900)

(*b*) *Nicholson, Ch.*: "It would seem that when the broad term "city railway" is used, the term must be taken to mean only what is essential to the definition of the term, and obviously no particular motive power is essential. * * When no kind

of motive power is mentioned, it should be taken to indicate that the Legislature means what it says, "a city railway," however propelled, whether by powers then familiar, or those they knew not of."

Wil. C. Ry. Co. vs. Wil. & B. S. Ry. Co., 8 Del. Ch. 468 at 514. (yr. 1900)

(*c*) *Nicholson, C. J.*: "In view of all these considerations, I am led to the conclusion that the complainant does possess, under its charter, the exclusive right and privilege of locating, constructing, operating and maintaining a city railway within the city limits." id. at 515.

The Chancellor held, however, that the "power of revocation" reserved in the Constitution of 1831 became a part of the charter of the Wil. C. Ry. Co., and the Legislature could exert the power at any time (p. 494); and the granting to another company of the right to use the streets of Wilmington for a street railway, was a revocation, protanto, of said exclusive right. (501-2)

And under the general corporation Act, the "exclusive right" above mentioned, is practically a nullity.

See Wil. C. Ry. Co. vs. Peoples Ry. Co., to be reported in 9 Del. Ch. (Decided by Nicholson, Ch.)

(*d*) See note "e" below.

(*e*) The Chancellor quotes the language of notes "d" and "e" and says:

Nicholson, Ch.: "To my mind, these two clauses, taken together, can be fairly construed into no other meaning than that, on the one hand, a monopoly to build within the city was granted, but on the other, the right to build was limited to the route indicated." (512)

(*f*) The contention was made that the reference to "steam power" and "bells," excluded an electric railway; but the Chancellor held otherwise. (515)

(*g*) See the cases of
P., W. & B. R. R. Co. vs. Wil. C. Ry. Co., 8 Del. Ch. 134. (yr. 1897)
N. C. & D. C. Ry. Co. vs. Del. R. R. Co., 8 Del. Ch. 419. (yr. 1899)

SEC. 8.(*a*) The said corporation shall at any time have full power to locate, alter and extend its tracks through and along any streets, avenues, highways and turnpikes in the City of Wilmington; *provided*, that the consent of the Council (*b*) of the said city shall first be obtained so to do. And the said corporation shall at any time have full power to locate, alter and extend its tracks from said city to any place or places outside of the city, not more than six miles distant from the city limits. And with respect to any railway which may hereafter be located and constructed under the provisions of this section, the said corporation shall have and exercise all the rights and privileges and be subject to all the duties and responsibilities which shall belong to or devolve upon the said corporation with respect to the railway to be originally located, con-

Track may be located on any street or road in the City of Wilmington. Proviso.

Consent of City Council to be obtained.

May extend tracks outside of city.

structed, operated and maintained under the provisions of this Act.

(*a*) This section is set out verbatim in the case of Wil. C. Ry. Co. vs. Wil. & B. S. Ry. Co., 8 Del. Ch. 468 at 489. (yr. 1900)

(*b*) *Nicholson, Ch.*: "Next in Section 8 was granted a privilege to build anywhere within the city, subject, however, to the condition of first obtaining the consent of the Council of the city, and with respect to any railways to be constructed under Section 8, the same rights and privileges were conferred as existed with respect to the first described railway," &c., viz in Sec. 7 id. (512)

Lands, how taken and condemned.

SEC. 9. Whenever it shall be deemed by the directors, necessary to enter upon and occupy any lands, tenements or hereditaments for the use of said corporation, if the owner or owners of such lands, tenements or hereditaments be not known, or be under the age of twenty-one years, or if the directors and such owner or owners cannot agree upon the compensation to be made therefor, the Superior Court for New Castle County, in term time, or any judge of the same, in vacation, shall, upon application by the company, appoint five commissioners, (who shall be freeholders,) who shall go upon the premises, (*a*) first giving notice of the time and place of their meeting to the president of the company, and to the owner or owners of the premises, if residing within the county, otherwise such notice shall be given to the tenant in possession of the premises. The commissioners being sworn or affirmed to perform their duties with fidelity, shall assess fairly and impartially the damages of such owner or owners to be sustained by the premises being taken for the use of the company, taking into consideration all the advantages to be derived to the owner or owners by reason of said railway, and shall certify their proceedings, with their assessment, under their hands and seals, or the hands and seals of a majority of them to the company; whereupon the said company, upon recording the same in the office for recording deeds in and for New Castle County, and paying to the owner or owners of the premises the damages assessed as aforesaid, or depositing the same to the credit of such owner or owners in the Farmers' Bank of the State of Delaware, at Wilmington, shall become entitled to hold, use, occupy and enjoy the said premises, exclusively, to it, its successors and assigns forever. *Provided*, that either

Commissioners to assess damages.

Proviso.

party being dissatisfied with the damages so assessed, may, on application to the Prothonotary of New Castle County, within ninety days after such assessment shall have been recorded as aforesaid, sue out a writ of *ad quod damnum* requiring the Sheriff of said county, in the usual form, to inquire, by twelve impartial men of his bailiwick, under oath or affirmation, of the damages aforesaid. The assessment of the jury duly made and returned by the Sheriff shall be final. If increased damages are found by the jury, the increased amount shall be paid or deposited by the company as before provided; and if the damages be reduced, the owner shall refund the amount diminished. The costs of the inquisition shall be paid by the unsuccessful party. The fee of a commissioner shall be one dollar per day, to be paid by the company, and of a juror, one dollar and fifty cents. The works of said company shall not be delayed by such application for a writ of *ad quod damnum,* but upon payment or deposit as hereinbefore provided, of the damages awarded by commissioners, the title of the company to enter upon, use, occupy and enjoy the premises inquired of, and to hold the same to it, its successors and assigns, shall become vested and perfect.

Ad quod damnum.

Costs.

Compensation of commissioners.

Title.

* * * * * * * * * * *

(*a*) For the construction of a similar clause relative to the condemning of land for street railway purposes, see Sec. 8, "a," pp. 501-2 of this volume.

See Cooper vs. D. G. E. Ry. Co., 8 Del. Ch. 462. (yr. 1900)

SEC. 10. If any person or persons shall willfully damage or obstruct the said railway or any part thereof, or hinder or delay the building of the same, or hinder or delay the passage of cars over the same, or damage any of the works or property of said company, such person or persons shall be liable to the company in a civil action for double the damages sustained, and shall moreover be guilty of a misdemeanor, and on indictment and conviction thereof shall be fined not exceeding three hundred dollars, at the discretion of the court.

Penalty for damaging or obstructing railway.

SEC. 11. This charter shall be perpetual, subject, nevertheless, to be revoked by the Legislature, at any time, for the

Charter perpetual.

Subject to revocation for misuse or abuse.

misuse or abuse, by the company, of the privileges herein granted.

* * * * * * * * * * *

Passed at Dover, February 4, 1864.

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19 D. L. 374.

A FURTHER SUPPLEMENT to an Act entitled "An Act to Incorporate the Wilmington City Railway Company," passed at Dover, February 4, 1864.

* * * * * * * * * * *

Proviso.

Consent of authorities.

Paving.

SEC. 3. *Provided,* that the Wilmington City Railway Company shall not enter upon any streets or roads to lay tracks or erect wires or poles without the consent of the duly authorized authorities of the city (*a*) or county, as the case may be, and that the said company shall be required to pave within the rails of their tracks and for the distance of three feet on either side thereof, and keep the same in good repair; and shall not interfere with the proper and free access to the culverts, water, gas, and other pipes for the public use in the said city; and the said company shall not at any time be allowed to charge a greater amount than five cents (*b*) for any one fare or ticket or ride in their cars throughout the said city.

Restriction as to fares.

Passed at Dover, March 26, 1891.

(*a*) The Street and Sewer Department.

(*b*) See P., W. & B. R. R. Co. vs. Bowers, 4 Houst. 506 at 534. (yr. 1873)

Wil. C. Ry. Co. vs. Wil. & B. S. Ry. Co., 8 Del. Ch. 468 at 500. (yr. 1900)

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15 D. L. 505.

AN ACT to incorporate the Front and Union Street Railway Company.

* * * * * * * * * * *

19 D. L. 375.

Corporation to build and maintain city railway.

[SEC. 7. It shall be the business of said corporation to locate, construct, operate, and maintain a city railway for the carriage of passengers and freight for compensation within the City of Wilmington, with the privilege also of extending such railway to any place or places outside of said city, to the dis-

tance of not more than six miles beyond the city limits, and the carriages or cars of said railway may be moved or propelled by horses, by electricity, by cable motor, or by any improved motive power, except steam, which said company may in its discretion at any time adopt, the right being hereby given said company to erect, construct, operate, and maintain such devices, contrivances, machinery and appliances as are necessary to render the said motive power effective in moving or propelling the carriages, cars, or other rolling stock of said company. Power.

The said railway shall commence at or near the intersection of Market and Front streets, and shall extend in a westerly course along Front street, and connecting streets, to such place or places as the directors of said company shall select, either within or without the city limits; *provided* said place so selected be not more than six miles distant beyond the city limits. From the westerly course of said railway above designated, said railway shall extend northerly along Union, DuPont and Broome streets, or either of them, and connecting streets, to a point not more than six miles beyond the northerly limits of the city; *and provided further,* that for the purposes aforesaid no streets shall be occupied by said Front and Union Street Railway Company where occupied by the Wilmington City Railway Company, or where proposed extensions of the lines of said last named company have been already consented to by the Street and Sewer Directors of Wilmington. The said railway, commencing at or near the intersection of Market and Front streets, aforesaid, shall extend easterly from said point along Front street, past the Philadelphia, Wilmington and Baltimore Railroad Depot, to Walnut street; thence by Walnut street to Fifth street; thence by Fifth street to Church street, and thence thereby to Eleventh street, and thence by Eleventh street, or by other streets connecting therewith, to a point or points not more than six miles beyond the easterly or northerly boundary lines of the city. (*a*) Commencement of city railway, and location. Proviso. Course of railway.

(*a*) This section is set out in the case of Petit. Front & Union St. Ry., 1 Penn. 370-371. (yr. 1898)

The said the Front and Union Street Railway Company shall have the privilege, if it so desires, of running over the Privileges of company.

tracks of the Wilmington City Railway Company from Market street to the side of Walnut street upon receiving the permission of the said Wilmington City Railway Company and paying the said last mentioned company an equitable compensation for such use of said tracks; *provided, however,* that no rights shall be acquired or claimed to use or occupy the tracks of said Wilmington City Railway Company or streets through, over or along which its railway shall be operated, except by contract and agreement of the two companies, but the said Front and Union Street Railway Company and said Wilmington City Railway Company may enter into such contracts and agreements respecting the use, occupation, maintenance and operation and furnishing power, equipment and appliances of their respective lines and properties, and the transfer of passengers, as shall be mutually satisfactory and agreed upon; *and provided further,* that in case no agreement can be reached between said companies allowing the Front and Union Street Railway Company to use the tracks of said Wilmington City Railway Company along Front street from Market street to Walnut street, then said Front and Union Street Railway Company may extend its tracks northerly from Front street by either Orange street or Shipley street to either Second street or Third street, and thence along either of said last named streets to Walnut street, and thence northerly as aforesaid.

Proviso.

Contracts respecting use of power, etc.

Proviso.

The railway or any part of the same to be constructed under this section may be laid with a single or double track, and the same may at any time be altered from the one to the other as the directors shall deem expedient, and it may be laid, located, constructed, operated and maintained with all sidings, turnouts, switches, poles, wires, cables, chains, devices, contrivances, machinery and appliances necessary in the judgment of said directors for the proper working of said railway, and for the purposes of locating, constructing, operating and maintaining the said railway with all its sidings, turnouts, switches, poles, wires, cables, chains, devices, contrivances, machinery and appliances as aforesaid the said company shall have power to use and occupy so much of any street, avenue, highway or turnpike within said city as may be necessary, and

Track of railway.

Equipments.

if any part of said railway extends beyond the city limits the company may, for the purposes aforesaid, use and occupy any public road of New Castle County, or if deemed expedient by the directors, may for the purposes aforesaid use and occupy any land other than a public road, the title to said land being first acquired as hereinafter directed; *provided,* that said railway shall be conformed as near as may be to the grades which now are or hereafter may be established for any street over which the same shall be located and shall not interfere with the proper and free access to the culverts, water and gas pipes in said city. The said railway may cross any track of any railroad company now incorporated or which hereafter may be incorporated, whether the same is a steam railway, horse railway or a railway of any other description; *provided,* that if it crosses said track at grade it conform to the grade of the track to be crossed, but nothing herein contained shall prevent said company from erecting, constructing, operating and maintaining either overgrade or undergrade crossings where in the discretion of its directors it may be deemed advisable.]

Grades.

Crossing tracks of railway companies.

SEC. 8. .[Whenever it shall be deemed by the directors necessary to enter upon and occupy any lands, tenements or hereditaments (for the use of said corporation) if the owner or owners of such lands, tenements or hereditaments be not known, or be under the age of twenty-one years, or if the directors and such owner or owners cannot agree upon the compensation to be made therefor, the Superior Court for New Castle County in term time, or any judge of the same, in vacation, shall, upon application by the company, appoint, subject to the limitations hereinafter contained, five commissioners (who shall be freeholders) who shall go upon the premises, (a) first giving notice of the time and place of their meeting to the president of the company [and] to the owner or owners of the premises if residing within the county, otherwise such notice shall be given to the tenant in possession of the premises. The commissioners being sworn or affirmed to perform their duties with fidelity shall assess fairly and impartially the damages of such owner or owners to be sustained by the premises being taken for the use of the company, taking into consideration all

19 D. L. 375.

Commissioners to view lands and assess damages.

Oath of commissioners.

Certificate of proceedings.

Payment of damages.

Proviso.

Writ of ad quod damnum.

Assessment final.

Fee of commissioners and jurors.

No delay by writ of ad quod damnum.

the advantages ([b]) to be derived to the owner or owners by reason of said railway, and shall certify their proceedings, with their assessment, under their hands and seals, or the hands and seals of a majority of them, to the company; whereupon the said company, upon recording the same in the office for recording deeds in and for New Castle County, and paying to the owner or owners of the premises the damages assessed, as aforesaid, or depositing the same to the credit of such owner or owners in the Farmers' Bank of the State of Delaware, at Wilmington, shall become entitled to hold, use, occupy and enjoy the said premises, exclusively to it, its successors and assigns forever; *provided*, that either party, being dissatisfied with the damages so assessed, may, on application to the Prothonotary of New Castle County, within ninety days after such assessment shall have been recorded as aforesaid, sue out a writ of *ad quod damnum*, requiring the Sheriff of said county, in the usual form, to inquire by twelve impartial men of his bailiwick, under oath or affirmation, of the damages aforesaid. The assessment of the jury duly made and returned by the Sheriff shall be final. If increased damages are found by the jury the increased amount shall be paid or deposited by the company as before provided, and if the damages be reduced the owner shall refund the amount diminished. The cost of the inquisition shall be paid by the unsuccessful party. The fee of a commissioner shall be one dollar per day, to be paid by the company, and of a juror, one dollar and fifty cents. The works of said company shall not be delayed by such application for a writ of *ad quod damnum*, but upon payment or deposit, as hereinbefore provided, of the damages awarded by commissioners, the title of the said company to enter upon, use, occupy and enjoy the premises inquired of and to hold the same, to it, its successors and assigns, shall become vested and perfect.

([a]) If the petition presented to the Superior Court complies with the requisites of the statute, it is granted as a matter of course, but this does not affect the rights of parties interested, and they, at a later time, may protect their rights by appropriate proceedings.

Lore, C. J.: "The company goes upon the land at its peril; if wrongfully, the question of right may be raised by an action of trespass in the law courts, or by an injunction in Chancery.

Then, upon competent and proper proof, the right will be authoritatively ascertained.''

Petition Front & Union St. Ry. Co., 1 Penn. 370 at 375. (yr. 1898)

If the consent of the Street and Sewer Department has not been obtained, this is no valid objection at the time the application is made for the appointment of freeholders.

Grubb, J.: ''The only other objection, then, is, that they have not shown that they have complied with some alleged prerequisites, that is, that they have not obtained the permission of the Street and Sewer Department of this city, as one step. I do not think that it is necessary to obtain that at this stage of the proceedings.'' id. 377.

See the case of Cooper vs. D. G. E. Ry. Co., 8 Del. Ch. 462. (yr. 1900)

(*b*) As to the question of ''damages'' and ''advantages,'' and the method of ascertaining the same, see Secs. 116 and 117 of the Charter.

Death or incapacity of commissioners. Vacancies, how filled. Proviso.

Should a commissioner appointed under this section die or become incapable of acting before the commission is executed, any judge of the Superior Court may fill the vacancy; *provided*, that the provisions of this section shall not be used or operative to acquire or use the tracks of said Wilmington City Railway Company, or rights, powers or privileges in the streets where its lines are operated, extended, or where extensions have been heretofore consented to by the Street and Sewer Directors of Wilmington; *and provided further*, that the Front and Union Street Railway Company shall not enter upon any streets or roads to lay tracks, or erect wires or poles, without the consent of the duly authorized authorities of the city or county, as the case may be, and that the said company shall be required to pave within the rails of their tracks, and for the distance of three feet on either side thereof, and keep the same in good repair, and shall not interfere with the proper and free access to the culverts, water, gas, and other pipes for the public use in the said city. And the said company shall not at any time be allowed to charge a greater amount than five cents for any one fare or ticket or ride in their cars through the said city.]

Willful injury to railway. Civil action for damages. Misdemeanor.

If any person or persons shall willfully damage or obstruct the said railway or any part thereof, or hinder or delay the building of the same, or hinder or delay the passage of cars over the same, or damage any of the works or property of the said company, such persons shall be liable to the company in a civil suit or action for double the amount of the damages sustained, and shall, moreover, be guilty of a misdemeanor,

Fine. and, on indictment and conviction thereof, shall be fined, not exceeding three hundred dollars, at the discretion of the court.

Passed at Dover, February 20, 1877.

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16 D. L. 583. *A SUPPLEMENT to the Act entitled "An Act to incorporate the Front and Union Street Railway Company," passed at Dover, February 20, 1877.*

* * * * * * * * * * *

Gauge. SEC. 3. The gauge of said railway shall be five feet two inches; it shall be laid with what is known as "flat rail," and

Company to pave. the said company shall be required to pave within the rails of their track, and for the distance of three feet on each side thereof, and to keep the said pavements in good repair. *Provided,*

Proviso. *however,* that the City Council (*a*) of Wilmington may, in their discretion, permit the said company, for a term not exceeding five years, to leave unpaved such portions of said railway in the rural or unimproved parts of said city as may be specially designated and exempted by ordinance of said City Council.

Passed at Dover, March 29, 1881.

(*a*) Now the Street and Sewer Department, since 1887.

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18 D. L. 874. *AN ACT to incorporate the "Eighth Street Passenger Railway Company."*

* * * * * * * * * * *

Object of corporation. SEC. 3. That the object and purpose of this Act is to authorize and empower the company hereby created, and said company is hereby authorized and empowered to erect, construct, operate and maintain a street railway within the City of Wilmington for the carriage and conveyance of passengers for compensation; the carriages or cars of said railway to be moved or propelled by horses, by electricity, by cable motor or by any improved motor power other than steam, which said company may in its discretion at any time adopt; the right being hereby given said company to erect, construct, operate and maintain such devices, contrivances and appliances as are necessary to render the said motive power effective in moving

or propelling the carriages, cars or other rolling stock of said railway.

Route of railway and its location.

SEC. 4. That the said railway shall be located and constructed along all or such part or parts of the following route as said company shall determine, to wit: Beginning at a point on Fourth street at or near the Christiana river; thence along Fourth street and from Fourth street to Eighth street, through, over and along any of the intervening streets; thence through, over and along Eighth street to the western limit of the City of Wilmington, with the right and privilege of locating, constructing, operating and continuing or extending said railway from any point or points on Eighth street to Seventh street, thence through, over and along Seventh street and through, over and along Greenhill avenue, Woodlawn avenue, Union street, DuPont street or any other street or avenue leading from Seventh street; *provided*, said company shall not locate or construct any part of its railway along that part of any street or avenue theretofore occupied by the tracks of either "The Wilmington City Railway Company" or "The Front and Union Railway Company," it being understood that this proviso shall not prevent or hinder the company hereby created from occupying such part of any street or avenue as is not occupied by the tracks of the two other above mentioned companies or either of them; or from crossing any street or avenue theretofore occupied by the tracks of the two other above mentioned companies or either of them.

Proviso.

Amount of street to be occupied.

The said railway may be laid with either a single or double track, or at any time altered from one to the other, as the directors shall deem expedient, together with all sidings, turnouts, switches, turntables, poles, wires, cables, chains, contrivances, appliances and connections necessary for the proper working of said railway, and for the purpose of constructing, operating and maintaining the said railway the said company shall have the power to use and occupy so much of any street or avenue within said city, designated as aforesaid, as may be necessary; *provided*, said railway shall conform to the grades which now are or hereafter may be established for any street or avenue through, over or along which the said railway may

Company to pave within the rails.

be located and constructed; *and provided also,* that said company shall be required to pave within the rails of their tracks and for the distance of three feet on either side thereof; and keep the same in good repair and shall not interfere with the proper and free access to the culverts, water, gas and other pipes for public use in the said city. The said railway may cross any track of any railroad company (*a*) now incorporated or hereafter to be incorporated, whether the same is a steam railway, horse railway or a railway of any other description; *provided,* that if it crosses said track at grade, it conform to the grade of the track to be crossed; but nothing herein contained shall prevent said company from erecting, constructing, operating and maintaining either over-grade or under-grade crossings where, in the discretion of its directors, it may be deemed advisable.

May cross any other railway track.

* * * * * * * * * * *

(*a*) See the cases of
P., W. & B. R. R. Co. vs. Wil. C. Ry. Co., 8 Del. Ch. 134. (yr. 1897)
N. C. & D. C. Ry. Co. vs. Del. R. R. Co., 8 Del. Ch. 419. (yr. 1899)

Land may be condemned for purposes of corporation.

Judge to appoint commissioners.

Commissioners to be sworn.

Report and award of commissioners to be recorded.

SEC. 12. Whenever it shall be deemed by the directors necessary to enter upon and occupy any lands, tenements, or hereditaments for the use of said corporation, if the owner or owners of such land, tenements or hereditaments be not known, or be under the age of twenty-one years, or if the directors and such owner or owners cannot agree upon the compensation to be made therefor, the Superior Court for New Castle County in term time, or any judge of the same in vacation, shall upon application by the company, appoint five commissioners (who shall be freeholders) to go upon the premises, (*a*) first giving notice of the time and place of their meeting to the president of the company and to the owner or owners of the premises, if residing within the county, otherwise such notice shall be given to the tenant in possession or agent in charge of the premises. The commissioners being sworn or affirmed to perform their duties with fidelity, shall assess fairly and impartially the damages of such owner or owners to be sustained by the premises being taken for the use of the company, taking into consideration all the advantages to be derived to the owner or owners by reason of said railway, and shall certify their pro-

ceedings with their assessment under their[1] hands and seals of a majority of them to the company; whereupon the said company, upon recording the same in the office for recording deeds in and for New Castle County, and paying to the owner or owners of the premises the damages assessed as aforesaid, or depositing the same to the credit of such owner or owners in the Farmers' Bank of the State of Delaware, at Wilmington, shall become entitled to hold, use, occupy and enjoy the said premises, exclusively to it, its successors and assigns forever; *provided,* that either party being dissatisfied with the damages so assessed, may on application to the Prothonotary of New Castle County, within sixty days after such assessment shall have been recorded as aforesaid sue out a writ of *ad quod damnum* requiring the Sheriff of said county in the usual form to inquire, by twelve impartial men of his bailiwick, under oath or affirmation, of the damages aforesaid. The assessment of the jury duly made and returned by the Sheriff shall be final.

Writ of ad quod damnum, may issue.

(*a*) See the case of
Petition Front & Union St. Ry. Co., 1 Penn. 370 at 375. (yr. 1898)
See Sec. 8, "a," pp. 501-2 this volume.

If increased damages are found by the jury the increased amount shall be paid or deposited by the company as before provided, and if the damages be reduced the owner shall refund the amount diminished. The costs of the inquisition shall be paid by the unsuccessful party. The fee of a commissioner shall be one dollar per day to be paid by the company, and of a juror one dollar and fifty cents. The work of said company shall not be delayed by such application for a writ of *ad quod damnum* but upon payment or deposit as hereinbefore provided of the damages awarded by the commissioners the title to the company to enter upon, use, occupy and enjoy the premises inquired of and to hold the same to it, its succesosrs and assigns, shall become vested and perfect. Should a commissioner appointed under this section die or become incapable of acting before the commission is executed any judge of the Superior Court may fill the vacancy.

In case of appeal who to pay costs.

Fee of commissioner.

Judge of Superior Court to fill vacancies in commission.

1. So enrolled.

Penalty for damaging railway.

SEC. 13. If any person or persons shall wilfully damage or obstruct the said railway or any part thereof, or hinder or delay the building of the same, or hinder or delay the passage of cars over the same, or damage any of the works or property of said company, such person or persons shall be liable to the company in a civil action for double the damages sustained, and shall moreover be guilty of a misdemeanor and on indictment and conviction thereof shall be fined not exceeding three hundred dollars at the discretion of the court.

Public act.

SEC. 14. That this Act shall be deemed and taken to be a public Act and shall be published with the other public Acts passed at this session of the Legislature, and the power to amend, alter or revoke the same is hereby reserved to the Legislature.

Street railway to be subject to Street and Sewer Department.

SEC. 15. That in the erection, construction, operation and maintenance of said street railway the said company shall be subject to the ordinances, rules and regulations of the Street and Sewer Department of said City of Wilmington so far as the same relate to the streets of said city.

Passed at Dover, April 1, 1889.

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22 D. L. 842.

AN ACT in relation to Ninth Street West of Market Street in the City of Wilmington, prohibiting Street Cars thereon.

* * * * * * * * * * * *

Ninth street west of Market street in the City of Wilmington to be free from railroad or railway tracks, except at intersections thereof by other streets.

SECTION 1. That no passenger, freight, street railway or other track shall be laid on or along Ninth street, west of Market, in the City of Wilmington, but the roadway of said street shall remain and be kept so as to afford a free and unobstructed passage or thoroughfare for carriages, wagons and other vehicles, used either for leisure or pleasure, provided, however, that nothing in this Act contained shall prevent or be construed to prevent the crossing of any and all parts of said Ninth street west of Market street, by railway tracks laid across the same where said Ninth street intersects any other street of said city, and provided further, that nothing in this Act shall prevent or be construed to prevent the operation of

cars of all kinds across said Ninth street at its said intersection with other streets in said city west of Market street.

SEC. 2. All acts or parts of acts inconsistent herewith are hereby repealed.

Approved February 17, A. D. 1903.

AN ACT in Relation to Tenth Street West of West Street in the City of Wilmington, Prohibiting Street Cars Thereon. 25 D. L. 317.

* * * * * * * * * * * * *

SECTION 1. That no passenger, freight, street railway or other track shall be laid on or along Tenth street, west of West, in the City of Wilmington, but the roadway of said street shall remain and be kept so as to afford a free and unobstructed passage or thoroughfare for carriages, wagons and other vehicles, used either for leisure or pleasure, provided, however, that nothing in this Act contained shall prevent or be construed to prevent the crossing of any and all parts of said Tenth street west of West street, by railway tracks laid across the same where said Tenth street intersects any other street of said city, and provided further, that nothing in this Act shall prevent or be construed to prevent the operation of cars of all kinds across said Tenth street at its said intersection with other streets in said city west of West street. Shall not be obstructed. Proviso.

SEC. 2. All Acts or parts of Acts inconsistent herewith are hereby repealed.

Approved March 31, A. D. 1909.

CHAPTER XVI.

ACTS IN RELATION TO BRIDGES.

	Page		Page
1. Act Authorizing the Baltimore and Philadelphia Railroad Company to Construct an Overhead Bridge	510	2. Act Authorizing the Philadelphia, Wilmington and Baltimore Railroad Company to Construct an Overhead Bridge	511

AN ACT to provide safe travel over certain highways in the City of Wilmington.

19 D. L. 421.

SECTION 1. That the Baltimore and Philadelphia Railroad Company be and it is hereby ordered and directed to construct, make and maintain a suitable overhead street bridge for public travel over the track and roadbed of said railroad company, where such track and roadbed intersects Lancaster avenue in the City of Wilmington. Such bridge shall be constructed within such times as the Board of Directors of the Street and Sewer Department of the City of Wilmington shall determine, and shall be of such height above such track and roadbed, and of such width, and of such general construction as the said Board of Directors of the Street and Sewer Department may determine. The construction of said bridge shall include the making of all necessary and proper approaches to said bridge. The said railroad company shall be solely responsible for all damages resulting to contiguous property by reason of the making of said bridge, and the making of the approaches thereto. Should the said railroad company neglect or refuse to construct such bridge, or the approaches thereto, in conformity with and within the time specified by the said Board of Directors of the Street and Sewer Department of the City of Wilmington, the said Board of Directors are hereby authorized and empowered to erect and construct such bridge and all necessary approaches thereto at the ex-

Railroad company to construct a certain bridge.

Dimensions of bridge.

Damages from making of bridge.

Failure of R. R. Co. to erect bridge.

pense of the city, and "The Mayor and Council of Wilmington" may then collect the cost of such erection and construction in an action on the case against such delinquent railroad company.

Supervision of bridge.

SEC. 2. The Board of Directors of the Street and Sewer Department of the City of Wilmington shall have supervision over the bridge by this Act authorized to be constructed, and may, from time to time, order the widening or repairing of said bridge by said railroad company in such manner and within such times as in their judgment public convenience may require; and in case the said railroad company shall neglect or refuse to obey any such order or direction in respect to the widening or repairing said bridge, said Board of Directors of the Street and Sewer Department for said city may cause the required widening or repairing to be executed at the expense of the City of Wilmington, and "The Mayor and Council of Wilmington" may then collect the amount of such expense in an action on the case brought in its corporate name against such delinquent railroad company.

Failure of company to observe direction of Board.

Passed at Dover, May 1, 1891.

AN ACT authorizing the building of an overhead bridge in the City of Wilmington.

19 D. L. 1020.

SECTION 1. That the Philadelphia, Wilmington and Baltimore Railroad Company, when in the opinion of its Board of Directors the exigencies of public travel demand the same, be and it is hereby authorized and empowered to construct, make and maintain in the City of Wilmington a suitable overhead street bridge and necessary approaches thereto for public travel from a point in Fourth street, between Spruce and Pine streets, in a southerly direction to a public bridge over the Christiana river (a) called the Third street bridge, and also in connection with said overhead bridge to construct and maintain an overhead foot bridge on the line of Church street for pedestrians. Such bridge or bridges shall be constructed of such height and width and of such general construction as may be determined upon by the said railroad company with the ap-

Location of bridge.

Manner of construction.

proval of the Board of Directors of the Street and Sewer Department of the City of Wilmington.

(*a*) These overhead bridges affect the streets of the city. As to the power of the Legislature to build bridges over and across inland creeks and rivers, see the case of
Bailey vs. Railroad Co., 4 Har. 389 at 396. (yr. 1846)
See Sec. 6, "c," p. 189 of this volume.

Acquisition of property.

SEC. 2. That the said company shall have power and authority to take, hold and acquire any lands, property or rights necessary for the erection and construction of said bridge or bridges, and in case the same cannot be acquired amicably then that the said company shall have power to take, acquire and enter upon such land, property and rights as may be necessary for the purpose aforesaid in the same manner and by the same proceedings as are now provided by law for the acquisition of land, property or rights for the purpose of locating and constructing said railroad in this State.

Vacation of streets.

SEC. 3. That in case it shall be necessary, proper or expedient to use, occupy or vacate, in whole or part, any street, avenue, square, lane, road or alley for the purpose aforesaid, The Mayor and Council of Wilmington, by the agency of the Board of Directors of the Street and Sewer Department of said city, shall have power by resolution to authorize such use, occupation or vacation, which resolution shall be published daily for one month in two daily newspapers published in said city; and any person sustaining injury by reason of such use, occupation or vacation may apply in writing to the Court of General Sessions of the Peace and Jaily Delivery in and for New Castle County, to appoint three disinterested and impartial freeholders to value the said damages who shall make return of their award to the said court at the next succeeding term, and the damages so assessed shall be paid by said company before any street, avenue, lane, road or alley shall be used, occupied, closed up or obstructed for the purpose aforesaid; *provided*, that all such applications shall be made and filed with the Clerk of said Court within three months after the publication above mentioned.

Damages.

Passed at Dover, May 4, 1893.

CHAPTER XVII.

ACTS IN RELATION TO SALES OF REAL ESTATE.

		Page
1.	Act Authorizing the Sale of a Certain Lot of Land at Twelfth and Orange Streets	513
2.	Act to Make Valid the Sales of Above Land	514
3.	Act Authorizing the Sale of Portion of Old Academy Lot in the Ninth Ward	515
4.	Act Authorizing the Sale of a Certain Lot of Land at Eighth and Scott Streets	516
5.	Act Authorizing the Sale of a Part of the Bed of Rockford Road	517

AN ACT to authorize the Council of Wilmington, to sell and convey certain real estate in the said city. 17 D. L. 402.

SECTION 1. That The Mayor and Council of Wilmington shall have power and authority and are hereby authorized, under an ordinance of Council to be passed with the concurrence of two-thirds of all the members thereof, for the time being, to sell and convey in fee all that portion of the real estate belonging to the city lying and being between Twelfth and Thirteenth, and Orange and Tatnall streets in said city.(a) Such sale may be either for cash or upon a credit to be secured by the bond and mortgage of the purchaser, or purchasers, and such real estate may be sold either in the entirety or by parcels, as Council may in such ordinance direct.[1]

Location of land.

Terms on which it may be sold.

(a). This was known as the "sand lot." It was referred to in the case below cited, as follows:

Saulsbury, Ch.: "It was said in the course of the argument of the present case, that the corporation of Wilmington owned a lot within the limits of the city called the "sand lot."

Coyle vs. McIntire, 7 Houst. 44 at 96. (yr. 1884)

See Sec. 2, "a" (below) of this Act.

1. A part of this land still remains unsold.

How proceeds of sale shall be applied.

Title.

Surplus, if any, how to be applied.

SEC. 2. The proceeds of the sale of said real estate shall be used to purchase other sand lots for the use of the said City of Wilmington, (a) and the City Council is hereby authorized to make such purchase, and to take the title to the same in fee simple. Any surplus which may remain unexpended, after such purchase or purchases, shall be paid to the Commissioners of the Sinking Fund of the City of Wilmington, to be by them expended in the purchase or redemption of the bonds of said city, or such surplus may be expended in making a payment on account of any debt of said city, which will reduce the amount of any loan authorized by law, and such authorized loan shall be reduced accordingly.

Passed at Dover, April 18, 1883.

(a) In the case below cited, the Court, after saying that the property held by the city is "public property," explains that the same property held by the city, while "public," in the general sense of the word, is really *private* property as against the county or even the State. In making clear the distinction the Court referred to the "sand lot" above mentioned. The Legislature might authorize it to be sold, but it could not authorize the money arising from the sale, for instance, to be given to the Town of New Castle. The money arising from the sale belongs to the city. (97)

Saulsbury, Ch.: "But suppose the sand lot owned by the City of Wilmington should become worthless to the city or not adapted to any municipal use and valuable only for sale to private persons for building purposes. Could it be doubted that the Legislature might direct it to be sold and the proceeds be devoted to some municipal or public purpose within the City of Wilmington."

Coyle vs. McIntire, 7 Houst. 44 at 97. (yr. 1884)

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18 D. L. 347.

AN ACT confirming the sale of certain real estate in the City of Wilmington.

Preamble.

Whereas, By a resolution of Council passed July 8, 1886, it was directed "That the Committee on Public Buildings be instructed to dispose of at public sale that portion of the city sand lot lying and being north of Thirteenth street;" and,

Whereas, Pursuant to said resolution the said Committee on Public Buildings did cause the said portion of the city sand lot to be exposed to public sale on Saturday the eighteenth (18) day of September, 1886, and sold the same to various bidders; and,

Whereas, Doubts have arisen as to the legality of said sale and it being deemed necessary to have an Act of the General Assembly confirming the same.

* * * * * * * * * * *

SECTION 1. That the said sale of the real estate aforesaid shall be deemed and taken to be as valid to all intents and purposes as if the General Assembly had prior to such sale passed an Act specifically authorizing the same, and "The Mayor and Council of Wilmington" is hereby authorized and empowered upon the receipt of the purchase moneys to cause proper deeds of conveyance to be made to the various purchasers of said real estate conveying the same in fee simple; *provided, nevertheless,* that if any purchaser as aforesaid shall neglect or refuse to pay all or any part of said purchase money within sixty (60) days after the passage of this Act, then in such event the said sale as to such purchasers shall become void and any purchase money already paid by such purchaser to the municipal corporation, or its agent, shall become forfeited, and all that portion of the said real estate shall be again exposed to public sale.

Sales valid.

Mayor and Council authorized to cause deeds to be made.

Proviso.

Passed at Dover, April 11, 1887.

AN ACT for the sale of certain real estate in the City of Wilmington.

18 D. L. 351.

SECTION 1. That The Mayor and Council of Wilmington are hereby authorized and empowered to expose to public sale and to execute and deliver good and sufficient deed or deeds to the purchaser or purchasers thereof all that portion of the old academy lot, situated in the Ninth ward of said city, which is bounded and described as follows, to wit: Beginning at a point in Vandever avenue at the westerly gable of the old academy school house building; thence along the said gable wall and at right angles with Vandever avenue aforesaid in a northerly direction seventy-three feet and four inches, more or less, to a corner; thence westerly and at right angles to the first mentioned line and parallel to Vandever avenue ten feet, more or less, to another corner; thence in a southerly direction

Description of lands.

parallel to the first mentioned line seventy-three feet and four inches to a point in Vandever avenue aforesaid; thence along Vandever avenue easterly ten feet, more or less, to the place of beginning.

Proceeds.

SEC. 2. The proceeds arising from the sale of said lot shall be expended for the purpose of public education in the Ninth ward of said city. (*a*)

Passed at Dover, April 18, 1887.

(*a*) The money arising from the sale is used in Wilmington. See Sec. 2, "a," p. 514 this volume.

AN ACT to authorize the sale of certain real estate in the City of Wilmington.

Power to sell certain real estate.

SECTION 1. That The Mayor and Council of Wilmington shall have power and authority and are hereby authorized, under an ordinance of Council to be passed with the concurrence of two-thirds of all the members thereof, for all the time being, to sell and convey, in fee simple, all that portion of the real estate belonging to the city lying and being between Du-Pont street, Scott street, Eighth street and Ninth street in said city; *provided, nevertheless,* that all that portion of said real estate now occupied for public school purposes, being 151 feet square, at the southeast corner of Ninth and Scott streets, as well as Howland street, at 50 feet 6 inches wide, running parallel to and 210 feet south of Ninth street, be and the same are hereby excepted and excluded from the operations and provisions of this Act. Such sale may be either for cash or upon a credit to be secured by the bond and mortgage of the purchaser or purchasers, and such real estate may be sold either in the entirety or by parcels, as Council may in such ordinances direct.

Proviso.

Proceeds of sale how paid and how expended.

SEC. 2. The proceeds of the sale of said real estate shall be paid to the Commissioner[1] of the Sinking Fund of the City

1. A part of this land still remains unsold.

of Wilmington, to be by them expended in the purchase or redemption of the bonds of said city, or such proceeds may be expended in making a payment on account of any debt of said city, which will reduce amount of any loan authorized by law, and such authorized loan shall be reduced accordingly.

SEC. 3. That all Acts and parts of Acts inconsistent with this Act be, and the same are hereby repealed.

Passed at Dover, March 7, 1889.

AN ACT authorizing "The Mayor and Council of Wilmington" to convey the title of a certain lot of land. 23 D.L. 273.

Whereas, the ownership of a small triangular lot of land, formerly a part of the bed of Rockford Road, between Sixteenth and Seventeenth streets, and bordering on Woodlawn avenue, on the easterly side thereof, has by the vacation of said road become vested in "The Mayor and Council of Wilmington;" and, Preamble.

Whereas, the said land is of no practical use to the said city since the vacation of said road, and it is desirable that the said city shall have authority to sell or dispose of the same. Preamble.

* * * * * * * * * * * *

SECTION 1. The Mayor and Council of Wilmington is hereby authorized and empowered to sell the whole or any part of the above mentioned land, and the said Mayor is authorized and directed, to execute and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds conveying the title thereto in fee simple when so directed by a resolution of the City Council. City authorized to sell certain land. Mayor to give deed.

Approved March 16, A. D. 1905.

CHAPTER XVIII.

MISCELLANEOUS ACTS.

		Page
1.	Act to Incorporate Wilmington Coal Gas Company	519
2.	Act Supplementary to Foregoing Act	519
3.	Act Relating to the Opening of Streets by said Company	520
4.	Act Prohibiting the Exhibiting of Stallions on Streets	520
5.	Act Prohibiting Burials in a Certain Graveyard	520
6.	Act Relating to the Repair of Banks and Sluices	521
7.	Act Authorizing the Licensing of Shows	522
8.	Act In Relation to the Condemnation of Land for Water Works	522
9.	Act Authorizing the Leasing of a Certain Wharf	523
10.	Act Vesting Title to "Old Academy" in the City	523
11.	Act Relating to the Taxation of Railroad Companies	523
12.	Act to Prevent Bogus Sales	524
13.	Act Respecting a Free Library	525
14.	Act Authorizing Additional Payments to Free Libraries in the City of Wilmington	527
15.	Act to Incorporate the Young Men's Association for Mutual Improvement	527
16.	Act Supplementary to Forgeoing Act	529
17.	A Further Supplement to Foregoing Act	530
18.	A Further Supplement to Foregoing Act	531
19.	Act Authorizing City Officers to Bond with a Surety Company	532
20.	Act Authorizing Amendment to the Charter of St. Michael's Day Nursery and Hospital for Babies	533
21.	Act to Prohibit the Aiding of Girls in Escaping from the Industrial School for Girls	534
22.	Act to Prevent the Display of Foreign Flags on Public Buildings	535
23.	Act in Relation to Auctions and Auctioneers	535
24.	Act Giving Law and Order Society One Half of Fines in Certain Cases	535
25.	Act in Relation to Disorderly Houses	536
26.	Act Re-incorporating the Water Witch Steam Fire Engine Company, No. 5	538
27.	Act Authorizing the Closing of Barber Shops on Sunday	540
28.	Act Relating to the Trade of Barbers in the City of Wilmington	540
29.	Act Authorizing Indemnity to E. I. DuPont de Nemours & Company	545
30.	Act Making Eight Hours a Day's Work for Municipal Employees	546
31.	Act Authorizing Munipipalities, &c., to Make Donations to the Organized Militia	548
32.	Act in Relation to Dogs Registered in Incorporated Cities	548

		Page
33.	Act Increasing the Fire Test for Coal Oil, &c., and Providing the manner of Making the Same	549
34.	Act Authorizing the Regulator of Weights and Measures to Inspect Milk Cans	552
35.	Act Determining the Standard Measure of Milk and Cream	552
36.	Act to License Pool and Billard Rooms and Bowling Alleys	553
37.	Act Repealing Certain Acts Authorizing Appropriations to Fire Companies and Authorizing the Execution of Contracts	553
38.	Act Relating to Motor Vehicles	554
39.	Act in Relation to Peddlers	562

AN ACT to incorporate the Wilmington Coal Gas Company.[1] 10 D. L. 575.

* * * * * * * * * * *

SEC. 2. That the corporation hereby created is so created for the purpose, and for such purpose shall have authority of supplying with gas, to light the town of Wilmington, and such individuals residing therein as may desire a supply of the same; * * * * * with the right to enter upon any public street, lane or highway, for the purpose of laying down the pipes necessary for conducting said gas; and to repair, alter and inspect the same, doing as little damage as possible to the streets, lanes and alleys, and repairing the injuries that may be done to the same, with as little delay as possible, and securing the citizens from accident and danger whilst so laying down or repairing their pipes. Power to enter upon streets, etc.

Passed at Dover, March 4, 1851.

A FURTHER SUPPLEMENT to the Act entitled "An Act to incorporate the Wilmington Coal Gas Company." 13 D. L. 231.

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SEC. 4. That the prices of gas shall be so regulated as that the dividends upon the capital stock of said company shall never exceed twelve per cent. per annum. Price of gas.

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Passed at Dover, January 30, 1867.

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1. For Supplement to this Act, see 11 D. L., Chap. 19, p. 16. See also the provisions of "An Act providing for a General Corporation Law" and amendments. 22 D. L. p. 758, Secs. 99, 102, 104 and 105.

19 D. L. 399. *A FURTHER SUPPLEMENT to the Act entitled "An Act to re-incorporate the Wilmington Coal Gas Company."*

* * * * * * * * * * *

Opening of streets.

SEC. 4. The said "The Wilmington Coal Gas Company" shall not open or excavate the bed of any street of the City of Wilmington for the purpose of laying gas pipes or conductors therein, without first obtaining the consent of the duly authorized authorities for said city; *provided, however,* that nothing herein contained shall require the said company to obtain the consent of the duly authorized authorities of said city before opening or excavating the bed of any street of said city for the purpose of repairing any gas pipes or conductors theretofore laid in such street by said company.

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Passed at Dover, April 15, 1891.

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11 D. L. 32. *AN ACT for the suppression of nuisances.*

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Exhibiting stallions or jacks on public streets prohibited.

That if any person shall exhibit any stallion or jack upon the public streets, lanes or alleys, or other places within the limits of any city, town or village in this State, he shall be deemed guilty of a misdemeanor; and upon conviction thereof, shall forfeit and pay to the State of Delaware a fine of not less than ten dollars, and not more than twenty dollars, with costs of prosecution; the same to be recovered by indictment or presentment in the Court of General Sessions of the Peace and Jail Delivery.

Prosecution in Court of General Sessions.

Passed at Dover, February 9, 1853.

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12 D. L. 45. *AN ACT prohibiting burials in the grave yard of "The African Union Church," in the City of Wilmington.*

Burials in African Union Church yard prohibited.

SECTION 1. That after the first day of January, 1862, it shall not be lawful to inter or bury any dead body in the ground heretofore used and now occupied by "The African

Union Church'' as a burial place, in the rear of their meeting house, and fronting on the easterly side of King street above Eighth street, in the City of Wilmington.

Penalty for violation of law.

SEC. 2. That if any person or persons shall, after the first day of January, 1862, inter or bury any dead body in the burial place described in Section 1, every such person or persons shall be deemed guilty of a misdemeanor, and forfeit and pay a fine of twenty-five dollars.

Passed at Dover, February 12, 1861.

AN ACT concerning certain marsh meadow within the City of Wilmington, and to repeal an Act therein mentioned.

12 D. L. 132.

Act repealed.

SECTION 1. An Act of Assembly made in the twelfth year of the reign of George the Third, entitled ''An Act to enable the owners and possessors of the marsh meadow on the north side of the Christiana river, in the Borough of Wilmington, to keep the banks, drains and sluices in repair,'' is hereby repealed.

Constructing and repairing banks, sluices and drains.

Expenses assessed upon owners.

City to bear portion of expense.

SEC. 2. The Mayor and Council of Wilmington are hereby authorized, within the limits of the marsh meadow, described in the first section, to repair the banks, sluices and drains, and to open, scour and cleanse the same, and new banks, sluices and drains to construct at such times and places as to them may seem expedient. They shall keep a just account of the expenses incurred under authority of this section, and make a just and equitable assessment of the same upon the owners of property in said tract of marsh meadow in proportion to the benefit conferred upon each lot and its owner. *Provided, however,* that the Mayor and Council of Wilmington shall bear a proportion of the expense so incurred, equal to the benefit accruing to the city by reason of such improvement. If any owner shall neglect or refuse to pay his proportion so assessed for the space of thirty days after presentation of a bill for the same, it shall be lawful for the Mayor and Council of Wilmington to recover the same from such delinquent as debts of like amount are recoverable by law.

Collection of unpaid bills.

Passed at Dover, March 5, 1861.

12 D. L. 159.

AN ACT concerning shows in the City of Wilmington.

Secs. 1 and 2, chapter 51, Revised Code, not applicable to Wilmington.

SECTION 1. Sections 1 and 2 of Chapter 51 of the Revised Code shall not hereafter apply to the City of Wilmington.

City may regulate and license shows.

SEC. 2. The City Council of the City of Wilmington is hereby authorized to pass ordinances to regulate shows, exhibitions and public representations of all kinds within the city, and to establish and receive for the use of the city all fees for licenses issued to the same.

Passed at Dover, March 6, 1861.

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13 D. L. 462.

A FURTHER SUPPLEMENT to the Act entitled "An Act to limit the city debt of Wilmington, and to provide for the discharge thereof," passed February 21, 1849.

Condemnation of land for water works.

SECTION 1. In case The Mayor and Council of Wilmington shall be unable to agree with the owners for the purchase of such land as may be required for the purpose of from time to time enlarging, extending and improving the works for supplying water to said city, then so much thereof as shall be required for such purposes may be condemned and taken therefor in the same manner and subject to the same conditions and proceedings as are, by Section 23 of Chapter 376 of the Laws of this State, entitled "An Act to amend the Charter of the City of Wilmington," prescribed for condemning and taking land for the extending, widening, laying out or opening streets, except that the commission to be issued shall command the freeholders to whom it shall be directed to assess the damages that may result to the several owner or owners of the land required for the purpose of enlarging, extending and improving the works for supplying water to the City of Wilmington. (*a*)

11 D. L. 415, to apply.

Exception.

Passed at Dover, April 2, 1869.

(*a*) See Sec. 116 of the Charter.

AN ACT authorizing the Mayor and Council of Wilmington, to lease to the Philadelphia, Wilmington and Baltimore Railroad Company certain wharf property, for a period exceeding ten years. 14 D. L. 139.

SECTION 1. That The Mayor and Council of Wilmington be and is hereby authorized to lease for a term not to exceed forty years from and after the 25th day of March, A. D. 1872, on such terms as it shall deem advisable to the Philadelphia, Wilmington and Baltimore Railroad Company, the wharf property situated at the foot of Walnut street, in the City of Wilmington, extending from the building line on the southerly side of Water street to the Christiana river.

Authority to lease Walnut street wharf to P., W. & B. R. R. Co. for 40 years.

Limits.

Passed at Dover, March 3, 1871.

AN ACT granting to the Mayor and Council of Wilmington, the State's right in a certain lot and building. 14 D. L. 261.

SECTION 1. That all the right, title, interest, claim and demand whatsoever, legal or equitable of the State of Delaware of, to, and in the lot or piece of land known as the "Old Academy" or school house lot in the Ninth ward of the City of Wilmington, formerly a part of the village of Brandywine, be and the same is hereby given and granted to and [vested] in The Mayor and Council of Wilmington, and their successors and assigns to and for the sole use and benefit of the Ninth ward of the City of Wilmington forever, with all the buildings and improvements thereon, and the incidents and appurtenances to the said lot appertaining and belonging, be the contents and descriptions thereof what they may.

Title to "Old Academy" in Ninth ward vested in city.

Passed at Dover, March 23, 1871.

AN ACT relating to taxes for county and municipal purposes. 18 D. L. 456.

SECTION 1. That all the real estate of "The Philadelphia, Wilmington and Baltimore Railroad Company" and of all other railroad corporations within this State, excepting nevertheless such real estate of each of the said corporations as shall be included within the limits of the rights of way, or roadbeds

Railroads shall be subject to county and municipal taxation.

of their respective lines of railroad, shall be subject to taxation and assessment for county and municipal purposes in the same manner as other like property of individuals is subject thereto for like purposes, any provisions of any existing law or laws to the contrary notwithstanding; *provided, however,* that any building erected in whole or in part within the limits of any such right of way or roadbed shall not by reason of the exception herein made be exempted from assessment and taxation, although the land upon which building shall be wholly, or in part, located, is by this Act expressly exempted therefrom. (*a*)

Proviso.

Passed at Dover, March 31, 1887.

(*a*) The Court, in the case below cited, held, the Constitution of 1897 did not repeal the above statute. It could have been passed after the Constitution went into effect, and, therefore, it was not affected by the Constitution.

Boyce, J.: "And it seems to us quite obvious that if the existing statute may be re-enacted without violating some prohibition of the Constitution, either express or implied, then there is no repugnancy between the Act and the Constitution. And this being so the Act is not unconstitutional, and not having been repealed, it continues in full force and operation."

Sayers vs. W. & N. R. R. Co., 3 Penn. 249 at 258. (yr. 1901)

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18 D. L. 887.

AN ACT to prevent bogus sales within the City of Wilmington.

Unlawful to falsely advertise goods for sale in Wilmington.

Act of Feb. 12, 1895, 20 D. L. 90.

SECTION 1. It shall not be lawful for any person engaged in the sale of any goods, wares or merchandise, within the [State of Delaware] to publicly and falsely, and with intent to deceive the general buying public, advertise or otherwise represent that such goods, wares or merchandise are or were either in whole or part the property of any insolvent or bankrupt or the assignee of any insolvent or bankrupt, or that such goods, wares or merchandise were either in whole or in part damaged by fire or accident of any kind, [nor shall it be lawful for any person to engage in the sale of any goods, wares or merchandise, within the corporate limits of the City of Wilmington, which shall have been brought to said city or consigned to any person in said city, for the purpose of the special sale thereof, as a removed stock of goods, or for the purpose of any sale thereof in any other than a regular business manner, by regular established merchants of the said city; *provided,* that this

Act of April 20, 1897, 20 D. L. 687.

Special sale of merchandise.

Proviso.

act shall not be so construed as to prevent any person from embarking in the regular business of a merchant by any other method than those herein or elsewhere in the laws of this State prohibited. *And provided further* that the provisions of this act shall not apply to goods and chattels shipped to said city from other points of the State of Delaware.] Any person offending against the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall forfeit and pay a fine of one hundred dollars. Upon the trial of any person for a violation of the provisions of this section the intent to deceive the general buying public shall be presumed where proof is made of a public and false advertisement or representation aforesaid.

Goods from other points in Delaware not included.

Penalty.

Passed at Dover, April 23, 1889.

AN ACT respecting a free library and to increase the usefulness of the schools of Wilmington.

Whereas, It is proposed to make the library and reading rooms of the Wilmington Institute, under such regulations as the Managers of the said Institute may adopt, free for the use of citizens of Wilmington, and as the free use of the library in connection with schools will add to their value, therefore,

Preamble.

* * * * * * * * * * * *

Section 1. That from and after such time as the Wilmington Institute shall cause its library and reading rooms to be open to the use of citizens of Wilmington, and shall thereafter keep the same open, without requiring any payment from individuals therefor; and shall apply the entire net income from the property of the Institute to be used in their management, maintenance and extension; and shall cause the accounts of its treasurer to be open to the inspection and audit of the State Auditor; and also shall make the Mayor, and the President of the Council, the Chairman of the Finance Committee of the Council, the President of the Board of Public Education, the Chairman of the Committee on Teachers of said board and the Superintendent of Public Schools, all of the City of Wilmington, members of its Board of Managers; and

Board of Public Education authorized to make certain payments on happening of certain events.

after the Council of Wilmington shall by resolution have accepted the provisions of this Act, [The Mayor and Council of Wilmington shall pay monthly to said Institute a sum (a) to be used in the management, maintenance, and extension of such Free Library and Reading Rooms] it shall be the duty of said Board of Public Education to pay monthly to said Institute, on or before the twentieth day of each month, a sum to be used in the management, maintenance and extension of such free library and reading rooms.

Mayor and Council of Wilmington to pay a sum monthly.

Act of April 7, 1909, 25 D. L. 188.

(a) As to the right of the city to make appropriations (since the Constitution of 1897), see Sec. 31 "a," paragraph 4 of the Charter. Page 60 this volume. (Ferris Industrial School vs. Levy Court.)

Amount.

SEC. 2. The sum to be paid, as provided in Section 1, shall be, during the first year, at the rate of five thousand dollars a year, and shall increase each year thereafter by an addition of five per cent. of the amount paid during the preceding year, provided such increase shall not at any time make the amount paid in a month greater than a sum equal to [one and one-half cents for each inhabitant of Wilmington; in which case the sum to be so paid shall be equal to one and one-half cents for each inhabitant of said city.

Proviso.

Basis for determining amount to be raised.

Act of April 7, 1909, 25 D. L. 188.

Estimates, how made.

Payments, when and how made.

The estimates of the number of inhabitants shall be made as the City Council of Wilmington shall direct. The payments shall be made to the Wilmington Institute at dates not later than the 10th of the calendar month on orders issued by direction of the City Council.]

Exemption from taxation.

SEC. 3. That after the library and reading rooms of the Wilmington Institute shall have been made free, in accordance with the provisions of this Act, the property of said Institute used by or for the benefit of the library and reading rooms shall be exempt from all taxes imposed by authority of the State of Delaware.

By-laws.

SEC. 4. That the Managers of the said Institute shall have power to make by-laws and rules (a) for the government of the library and reading rooms.

Passed at Dover, April 26, 1893.

(a) See, as to the meaning of "rules," Sec. 76, "a" of the Charter.

A SUPPLEMENT to an Act entitled "An Act respecting a Free Library and to increase the usefulness of the Schools of Wilmington," passed April 26, 1893, being Chapter 734, Volume 19, Delaware Laws, authorizing larger payments by the Mayor and Council of Wilmington toward the support of free libraries and reading rooms in the City of Wilmington. 22 D. L. 687.

* * * * * * * * * * * * *

SECTION 1. The Mayor and Council of Wilmington is hereby authorized and empowered to enter into further continuous or perpetual contracts with the Wilmington Institute, by ordinance of Council approved by the Mayor, respecting payments of money toward the support of free libraries and reading rooms in the City of Wilmington beyond and besides, or instead of, the payment provided for in the Act to which this is a supplement. Mayor and Council of Wilmington may make additional payments of money to the Wilmington Institute.

SEC. 2. The Mayor and Council of Wilmington is hereby authorized and empowered to enter into continuous or perpetual contracts by ordinance of Council approved by the Mayor with a party or parties designated by the Wilmington Institute respecting payments of money to be made toward the support of free libraries and reading rooms in the City of Wilmington. May contract with an agent of the Institute.

Approved March 26, A. D. 1903.

AN ACT to incorporate the Young Men's Association for Mutual Improvement of the City of Wilmington. 11 D. L. 358.

SECTION 1. That the members of the Young Men's Association for Mutual Improvement, of the City of Wilmington, and all persons who shall hereafter be associated with them, are hereby created a body corporate by the name of "The Young Men's Association for Mutual Improvement, of the City of Wilmington," for the purpose of establishing and maintaining a library, reading room, literary and scientific lectures, debates and other means of promoting moral and intellectual improvement, with power for such purposes to take by Corporate name. Objects of association.

purchase, devise or otherwise and to hold, transfer and convey real and personal property to the amount of fifty thousand dollars; *and also further,* to take, hold and convey all such books, cabinets, library, furniture and apparatus as may be necessary for attaining the objects and carrying into effect the purposes of said corporation.

Amount of property.

Act of April 24, 1893.

[SEC. 2. That the control of the funds, property and estate, and the direction and management of the concerns of said corporation shall be vested in a board of sixteen managers, to consist of the Mayor, President of City Council, Chairman of the Finance Committee of City Council, President of the Board of Public Education, Chairman of the Committee on Teachers of said board and the Superintendent of Public Schools, all of the City of Wilmington, and ten other persons to be elected by the stockholders of the Wilmington Institute.]

Control of funds; in whom vested.

SEC. 3. That the several officers of the said association, at the time of the passage of this Act, shall continue to hold their respective offices as officers of the corporation hereby created, until the next annual election, unless in case of a vacancy previously occurring by death, resignation or otherwise; and all personal property or funds or securities now held by the said officers or either or any of them, or any other person or persons in trust for the said association or for the use and benefit of the same, including choses in action, which by the terms thereof are payable to either or any of the said officers or to any other person or persons in trust for the said association, shall, by virtue of this Act, vest in and become the property of and may be sued for and recovered in the name of the corporation hereby created; and the said corporation shall assume and be liable for all contracts, agreements and responsibilities which have been entered into or incurred previous to the passage of this Act by the officers of the said association or any of them lawfully acting in behalf of said association.

Annual election.

SEC. 4. That the annual election for officers of the said corporation shall be held on the first Tuesday of February in each year or on such other day as the said corporation in and by its [by-laws] may appoint.

14 D. L. 363.

Executive committee, powers and duties.

SEC. 5. That the executive committee shall have power to fill all vacancies which may occur in any of the offices of the said corporation, and to appoint and at pleasure remove such other officers, agents or servants as the business or interests of the said corporation may in their opinion require.

Funds, how devoted.

SEC. 6. That the estate, property and funds of the said corporation shall be devoted solely to the general purposes and objects specified in the first section of this Act.

SEC. 7. That this Act shall be deemed and taken to be public; and the power to revoke this charter is hereby reserved to the Legislature.

Passed at Dover, February 10, 1857.

A SUPPLEMENT to the Act entitled "An Act to incorporate the Young Men's Association for Mutual Improvement of the City of Wilmington." 11 D. L. 604.

Name changed to Wilmington Institute.

SECTION 1. That the name and style of the corporation created by the Act to which this is a supplement, be and the same is hereby changed from that of "The Young Men's Association for Mutual Improvement, of the City of Wilmington," to that of "The Wilmington Institute," (*a*) by which last mentioned name the said corporation shall continue to have succession for the purposes named in the Act aforesaid, and with all the powers and franchises incident to a corporation under the laws of the State of Delaware.

(*a*) An indictment charged the defendant with the larceny of certain books "of the goods and chattels of the Wilmington Institute," &c. The indictment did not state that the "Wilmington Institute" was a corporation. The Court held it was not necessary to charge it was a corporation.

"In an indictment for larceny, where the name of the corporation is stated as owner of the property, there need be no averment that it is a corporation." (syllabus)

State vs. Rollo, 3 Penn. 421 at 422. (yr. 1901)

Certain rights vested.

SEC. 2. That the members at present being of "The Library Company of Wilmington" shall be members of the corporation created by the act to which this is a supplement, and the said membership shall be perpetuated, governed or dis-

solved according to the constitution and by-laws of the said corporation, and that all the immunities and franchises, and all the rights, properties and effects, credits and dues belonging to the said "The Library Company of Wilmington," shall be and are hereby vested in the aforesaid corporation, herein named and styled "The Wilmington Institute."

Misnomer in deed, will, etc.

SEC. 3. That no misnomer of the corporation created by the act to which this is a supplement, in any deed, will, testament, gift, grant, demise, contract, or other instrument, shall avoid or vitiate the same; *provided,* there be sufficient to ascertain the intent of the parties.

SEC. 4. That this Act shall take effect from the day of its passage; it shall also be deemed and taken to be public, and shall continue in force for twenty years, unless sooner revoked by the Legislature.

Passed at Dover, January 27, 1859.

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14 D. L. 363.

A FURTHER SUPPLEMENT to the Act entitled "An Act to incorporate the Young Men's Association for Mutual Improvement, of the City of Wilmington."

Capital stock; how constituted and divided.

SECTION 1. That all property, real and personal, now held and owned by the Wilmington Institute, the corporation mentioned in the Act to which this is a supplement, including the equitable interest in certain real estate now held by trustees for the benefit of said corporation shall, from and after the passage of this Act, constitute a capital stock, to be divided into three thousand shares of ten dollars each, with the privilege of increasing the same from time to time by a vote of the stockholders, so that the value of its property shall not exceed the sum of one hundred and fifty thousand dollars. That it shall be the duty of the executive committee of said corporation to issue to each member of the said corporation a certificate of the *pro rata* number of shares of said stock to which he is entitled, counting each life member equal to two annual members, and each perpetual member equal to three annual members. That each share of stock, except one share to be held

Certificates.

by each perpetual and life member shall be subject to such semi-annual or other tax as may be provided in the by-laws, and any share of stock upon which the tax for a period of six months shall not be paid within one year from the passage of this Act shall be forfeited to the corporation. Shares of capital stock shall be personal estate, and the same shall be certified, held and assigned, or forfeited for non-payment of dues according to the provisions of the by-laws. Tax on shares.

* * * * * * * * * * *

SEC. 6. That this Act shall be deemed and taken to be a public Act, and the power to revoke the same is reserved to the Legislature.

Passed at Dover, March 7, 1873.

A FURTHER SUPPLEMENT to the Act entitled "An Act to incorporate the Young Men's Association for mutual improvement of the City of Wilmington."

* * * * * * * * * * *

SEC. 3. The terms of the several officers and directors of the said corporation, under its present organization shall expire upon the acceptance of this Act, and the election of ten managers as provided for in Section 1. The terms of the ten first elected under the provisions of this Act shall expire, two each year on the second Monday in April of five successive years; and elections to fill vacancies thus occurring shall be for terms of five years. Terms of officers expire, when. Expiration of terms of managers.

SEC. 4. The Executive Committee shall have power to fill vacancies for unexpired terms of any of said elected members. Vacancies, how filled.

SEC. 5. That from and after the acceptance of this Act each share of stock shall entitle the holder thereof to one vote at all elections. Elections, who can vote.

Power to adopt by-laws.

SEC. 6. That from and after the acceptance of this Act, and the organization of a Board of Managers, as provided herein, such Board of Managers shall have power to adopt new by-laws for the corporation, and the same to repeal, revoke or alter, by a vote of a majority of the whole board at two successive stated meetings.

SEC. 7. That this Act shall be deemed and taken to be a private Act, and the power to revoke the same is reserved to the Legislature.

Passed at Dover, April 24, 1893.

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20 D. L. 96.

AN ACT relative to Bonds, Undertakings, and other Obligations with Surety or Sureties, to the acceptance as Surety or Guarantor thereupon of Companies qualified to act as such, and to provide a uniform System of procedure by and Standard of Qualification for such Companies.

* * * * * * * * * * *

Surety company may become surety in any case.

SECTION 1. Whenever any bond, undertaking, recognizance or other obligation is by law or the charter, ordinances, rules or regulations of any municipality, board, body, organization or public officer, required or permitted to be made, given, tendered or filed with surety or sureties, and whenever the performance of any act, duty or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guarantee may be executed by a surety company qualified to act as surety or guarantor as hereinafter provided; and such execution by such company of such bond, undertaking, obligation, recognizance or guarantee shall be in all respects a full and complete compliance with every requirement of every law, charter, ordinance, rule or regulation that such bond, undertaking, obligation, recognizance or guarantee shall be executed by one surety or by one or more sureties, or that such sureties shall be resi-

And may be sufficient alone whether such case requires one or more sureties.

And also when freehold or resident surety is required.

dents or freeholders, or either or both, or possess any other qualification and shall be accordingly accepted and treated.[1]

* * * * * * * * * * *

Certificate from insurance Commissioner authorizing to act as surety.

SEC. 3. Upon production of proof to the Insurance Commissioner of this State by any company organized under the laws of any other State than this State that it possesses the qualifications by this act required and that it has in all respects complied therewith, he shall issue to such company and to each of its agents in this State a certificate that it is authorized to become and be accepted as sole surety on all bonds, undertakings and obligations, required or permitted by law, or the charter, ordinances, rules and regulations of any municipality, board, body, organization or public officer, which said certificate shall be *prima facie* evidence of such company's right to do business in this State; *provided, however,* that no such company as aforesaid, by virtue of this act, shall within the limits of this State, by implication or construction, be deemed to possess the power to act in the capacity of executor, administrator, guardian, trustee, receiver, assignee, or agent, or in any other capacity than that of surety, anything in its charter or articles of incorporation to the contrary hereof notwithstanding; *and provided further,* that all certificates issued by the Insurance Commissioner of this State under the provisions of this act shall expressly set forth the limitations and restrictions contained in the preceding proviso.

No power hereby granted except to act as surety.

Certificate of Insurance Commissioner to specify said restrictions.

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Passed at Dover, May 6, 1895.

AN ACT to amend the charter of "St. Michael's Day Nursery and Hospital for Babies." Vol. 20, 116.

* * * * * * * * * * *

Child under ten years may be committed to its care.

SEC. 2. That the corporation is hereby authorized and empowered, with the consent of the managers of the corpora-

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1. Expense of Surety Company bonds given by certain municipal officers to be paid by municipality. 25 D. L, Sec. 3, p. 296.

tion, to take and receive into its custody, care and control any child under the age of ten years, who may be committed or bound to it by any person, or by any court of record or justice of the peace of the State of Delaware pursuant to any law of the State of Delaware, and every court of record and justice of the peace of the State of Delaware is hereby authorized and empowered to commit or bind to said corporation, with the consent of the managers of said corporation, any child under the age of ten years which by any law of the State of Delaware may be committed or bound to any orphan asylum, charitable or other organization or institution in the State of Delaware for the care of children.

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Passed at Dover, March 14, 1895.

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20 D. L. 240. Appendix.

[1]*AN ACT to prevent the aiding or harboring of girls escaping from The Delaware Industrial School for Girls.*

Aiding girls in escape from Industrial School for Girls, misdemeanor.

SECTION 1. That if any person shall knowingly advise, promote or aid in the escape or running away of any girl from the guardianship or custody of the managers of The Delaware Industrial School for girls, or shall knowingly harbor or conceal, or aid in harboring or concealing, any girl who has escaped from the guardianship or custody of the said managers after such girl has been regularly committed thereto, every such person shall be deemed guilty of a misdemeanor and shall, on conviction thereof before any justice of the peace in the county wherein the said offence has been committed or before the municipal judge of the City of Wilmington, be fined not less than ten or more than one hundred dollars, to be paid to the treasurer of said school for the use thereof.

Fine.

Passed at Dover, April 29, 1895.

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1. This Act was not duly enrolled and signed by the Speakers of the respective branches of the General Assembly, but is published in the appendix to Volume 20 of Laws of Delaware.

AN ACT to prevent the display of any Foreign Flags on Public Buildings. 20 D. L. 193.

SECTION 1. It shall not be lawful to display the flag or emblem of any foreign country upon State, county, town or municipal building; *provided, however*, that whenever any foreigner shall become the official guest of the United States, the State or of any city, upon public proclamation by the President of the United States, by the Governor, or the Mayor of such city, the flag of the country of which such public guest shall be a citizen may be displayed upon such buildings. Foreign flag not to be displayed on public building. Exception.

SEC. 2. Any person violating the provisions of this act shall be punished by a fine of not less than twenty-five nor more than fifty dollars. Punishment.

Passed at Dover, February 26, 1895.

AN ACT in relation to Auctions and Auctioneers in the City of Wilmington. 20 D. L. 691.

SECTION 1. That the The Mayor and Council of Wilmington be and they hereby are empowered to license, tax and regulate (*a*) auctions and auctioneers in and for the City of Wilmington in such manner as the City Council, by ordinance, shall prescribe. Auctions and auctioneers' license, &c.

Passed at Dover, May 29, 1897.

(*a*) Section 31 of the Charter gives "The Council" the power to enact ordinances "to provide for the *regulation* of auctions and auctioneers."

The above provision gives the power to *license* and *tax* auctioneers, as well as to regulate them. In the year 1896 the Superior Court, in the case of Gray vs. Wil., 2 Marv. 257 (yr. 1896), decided that "The Council," under Sec. 31 of the Charter, had not power to *license* milk dealers. About the same time, one Drake, had been arrested for acting as auctioneer without a license. The decision in the Gray case made clear the powers of "The Council," and in 1897 the above law was passed in regard to auctions and auctioneers.

(See Sec. 31, "j," of the Charter.)

AN ACT in relation to Certain Fines. 20 D. L. 714.

SECTION 1. Hereafter one-half of all the fines, penalties and forfeitures imposed and collected in any county of this

Law and Order Society of Wilmington to receive one-half of fines, when.

State where the evidence to secure the conviction shall be produced and furnished by the Law and Order Society (*a*) of Wilmington, Delaware, a corporation of the State of Delaware, or its agent or agents, shall inure and be paid to such society in aid of the purposes for which it was incorporated.

(*a*) Fines ordinarily are paid into the city treasury for the use of the city.

See as to the above law, Sec. 148 "a" of the Charter, and the case of Law and Order Society vs. Mayor and Council of Wil., 4 Penn. 366 at 367. (yr. 1903)

SEC. 2. All acts or parts of acts inconsistent with this act are hereby repealed.

Passed at Dover, May 26, 1897.

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20 D. L. 272. Appendix.

[1]*AN ACT in relation to Disorderly Houses and Houses of Ill-Fame and Assignation.*

SECTION 1. Any person who keeps or has any interest in keeping a house of ill-fame or assignation of any description, or a house or place for persons to visit for unlawful sexual tercourse, or for any sexual, obscene or indecent purpose or a disorderly house (*a*) or any place or public resort by which the peace, comfort or decency of a neighborhood is disturbed, shall be guilty of a nuisance, and upon conviction thereof shall forfeit and pay a fine of not less than fifty dollars nor more than one hundred dollars, and in default of payment of such fine, together with costs, shall be imprisoned in the county jail for the term of two months, and upon a second or any subsequent conviction thereof shall forfeit and pay a fine of not less than one hundred dollars, nor more than two hundred dollars, or to be imprisoned not more than six months, or both, at the discretion of the court. In default of payment of the fine imposed upon such second or any subsequent conviction, together with costs, the same shall be a lien upon the premises, where such nui-

Disorderly house or house of ill-fame.

Nuisance.

Fine.

Imprisonment.

Liens upon premises.

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1. This Act was not duly enrolled and signed by the Speakers of the respective branches of the General Assembly but is published in the appendix to Vol. 20.

sance was committed; *provided*, that the owner or agent of such premises shall have been notified that such nuisance has been committed, and such lien shall be properly recorded and indexed by the clerk of the court where such conviction shall be had, and may be collected by proper execution process. The Municipal Court of the City of Wilmington shall have jurisdiction in all cases of violation of this section occurring within the said city. The sheriff, or in the City of Wilmington the chief of police, shall forthwith cause notice of any conviction under this section to be served upon the owner or owners of the premises upon or in which such nuisance shall have been committed; such service may be made upon the owner or owners personally or by leaving a copy thereof at his or their usual place of abode, or if the place of abode of any owner be not known or not in the State, then such service may be made upon his agent, if he have any.

Proviso.

Jurisdiction.

Notice of conviction to be sent to owner of premises.

(*a*) In regard to disorderly houses, in general, see page 750 of this volume.

Lease for illegal purposes null and void.

Illegal use of premises makes lease null and void, and premises may be repossessed by owner.

Remedy.

Owner of premises permitting nuisance after notice becomes guilty of misdemeanor.

SEC. 2. Any lease, contract, agreement or demise made by any person or persons for the letting or using of any place or building, or any portion of a building, for any of the purposes specified in the preceding section of this act, shall be null and void; and the use of any place or building, or any portion of a building, for any of said purposes, shall terminate and render thenceforth null and void any lease, contract, agreement or demise for the letting or use thereof; and in each case the person or persons who would be entitled to the possession of the premises if such lease, contract, agreement or demise had not been made shall have the right of immediate possession thereof, as if such lease, contract, agreement or demise had not been made; and the provisions, remedies, processes and penalties provided for in Chapter CI of the Revised Code of the Statutes of Delaware, published in 1893, in cases of forcible entry and detainer, shall be applicable for the purpose of restoring the person or persons entitled as aforesaid to the possession of such premises. After sufficient time has elapsed from the date of notice being served as aforesaid to enable him to secure the possession of the premises under the provisions of this section, any owner who shall still permit his

premises to be used for any of the purposes mentioned in Section 1 of this act shall be guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not less than fifty nor more than two hundred dollars.

Fine.

SEC. 3. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Passed at Dover, May 9, 1895.

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20 D. L. 670.

AN ACT to repeal an act in reference to the Water Witch Steam Fire Engine Company, No. 5, of Wilmington, Delaware, passed April 12th, 1893, being Chapter 718, Volume 19, Laws of Delaware, and to repeal the acts by said act restored, revived and renewed, and to reincorporate the said company under the name of The Water Witch Fire Company, No. 5, of Wilmington, Delaware.

Act repealed.

SECTION 1. That Chapter 306, Volume 8; Chapter 514, Volume 16; and Chapter 718, Volume 19, Laws of Delaware, be and the same are hereby repealed and made null and void, and that the members of the Water Witch Steam Fire Engine Company, No. 5, of Wilmington, Delaware, the corporation by said acts created, be and the same are hereby declared to be members of the corporation hereinafter created and reincorporatd, and that the real and personal property of the said corporation is hereby absolutely vested in the said corporation hereby reincorporated and created.

Members and property of old company transferred to new.

Company incorporated.

SEC. 2. That the members of the Water Witch Steam Fire Engine Company, No. 5, of Wilmington, Delaware, shall be and hereby are created a body politic and corporate, to have continuance and succession as a corporation for the period of twenty years from and after the passage of this act and no longer.

Style.

SEC. 3. The name and style of said body politic and corporation shall be "The Water Witch Fire Company, No. 5, of Wilmington, Delaware."

Object. SEC. 4. That the general purposes for which said corporation is organized shall be the extinguishment of fires, and that it shall have power to adopt, use and employ any and all means and appliances by it deemed advisable and not contrary to law to carry out said purposes.

Powers.

Powers as to property. SEC. 5. That the said corporation shall have power to purchase, take, hold, buy, sell, convey and demise real and personal property not inconsistent with the purposes for which it is created to the value of forty thousand dollars and no more.

By-laws. SEC. 6. That the said corporation shall have full power to make, adopt, change and alter constitutions and by-laws for the government of itself and its members, not inconsistent with nor repugnant to the laws of the State of Delaware, and to adopt and use a common seal.

Seal.

Subject to State laws. SEC. 7. That the said corporation shall have all the powers and be subject to all the liabilities usually belonging and incident to corporations created under the Constitution and laws of the State of Delaware.

Repealed by Act of April 7, 1909, 25 D. L. 315. SEC. 8. * * * * * * * * * *

Misnomer in deed, &c. SEC. 9. That no misnomer of the corporation hereby created shall invalidate any deed, will, testament, gift, grant, demise or other instrument, provided there be sufficient therein to ascertain the intent of the parties thereto.

SEC. 10. That all acts or parts of acts repugnant to or inconsistent herewith be and the same are hereby repealed.

SEC. 11. That this act shall take effect from its passage and shall be deemed and taken to be a public act, and the power to revoke, alter and amend the same is hereby expressly reserved to the Legislature.

Passed at Dover, March 23, 1897.

21 D. L. 433.

AN ACT to authorize the closing of Barber Shops on Sunday.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:

Barbers not to pursue occupation on Sunday.

SECTION 1. Any person who carries on or engages in the business of shaving, hair-cutting or other work of a barber, or who opens or allows to be open his barber shop, or place where such business is done, for the purpose of carrying on his said business on the first day of the week, commonly called Sunday,

Misdemeanor.

shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than

Penalty.

twenty dollars, and on failure to pay such fine and costs shall be imprisoned not exceeding ten days.

Jurisdiction of officers.

SEC. 2. Any Justice of the Peace of the County shall have jurisdiction and cognizance of the offences mentioned in Section 1 of this Act, except when said offences are committed in the City of Wilmington, in which case the Municipal Court of said city shall have exclusive jurisdiction.

Approved February 23, A. D. 1899.

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22 D. L. 214.

AN ACT relating to the trade of Barbers in the City of Wilmington, Delaware.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:

Board of Barber Examiners. How appointed.

SECTION 1. That a Board of Examiners, to consist of three reputable barbers, is hereby created, whose duty it shall be to carry out the purposes and enforce the provisions of this Act. The members of said Board shall be appointed by the Governor, who shall select them from the barbers residing in

Terms of office.

the City of Wilmington, Delaware. The term for which the members of said Board shall hold their office shall be for three years (except that two members of the board first to be appointed under this Act, shall be designated by the Governor to hold their office for the term of one and two years respectively), unless sooner removed by the Governor, and until their successors shall be duly appointed in case of vacancy occurring in said board, such vacancy shall be filled in like manner by the Governor. Each member of said board shall enter

Vacancy, how filled.

into a bond to the State of Delaware with one or more sureties to be approved by any Judge of any Court of this State, in the penal sum of five hundred dollars ($500.00), conditioned for the faithful performance of his official duties; said bond shall be filed in the office of the Secretary of State, and before entering upon his duties each member shall be duly sworn or affirmed to faithfully and impartially perform the duties of his office.

Bond of.

To be filed in office of Secretary of State.

SEC. 2. The said board shall choose one of its members President, one Secretary and one Treasurer thereof. It shall fix the time and place of meeting or meetings. A majority of said board shall at all times constitute a quorum and the proceedings thereof shall at all reasonable times be open to a reasonable inspection. The board shall also make an annual report of its proceedings to the Governor. It shall have power to adopt reasonable rules (a) and regulations, prescribing the sanitary requirements of a barber shop subject to the approval of the Board of Health of the City of Wilmington, and to cause the rules and regulations so approved to be printed in suitable form and to transmit a copy thereof to the proprietor of each barber shop in the said City of Wilmington. It shall be the duty of every proprietor or person operating a barber shop in said city to keep posted in a conspicuous place in his shop, so as to be easily read by his customers, a copy of such rules and regulations. A failure of any such proprietor to keep such rules so posted or to observe the requirements thereof, shall be sufficient ground for the revocation of his license, but no license shall be revoked without a reasonable opportunity being offered to such proprietor to be heard in his defense. Any member of said board shall have power to enter and make any reasonable examination of any barber shop in said city during business hours, for the purpose of ascertaining the sanitary conditions thereof. Any barber shop in which tools, appliances and furnishings in use therein are kept in an unclean and unsanitary condition so as to endanger health is hereby

Organization.

Annual report.

Rules and regulations.

Rules to be printed.

To be posted in conspicuous places.

Penalty for non-compliance.

Powers of.

declared to be a public nuisance, and the proprietor thereof shall be subject to prosecution and punishment therefor.

(*a*) As to the meaning of the word "rules" see Sec. 76 "a" of the Charter, and the case of
Morris et al vs. Pilot Coms., 7 Del. Ch. 136. (yr. 1894)

Meetings of Board.

SEC. 3. That said board shall meet at least three times in each year in the said City of Wilmington to conduct an examination of persons desiring to follow the business or occupation of barbers, and shall give at least ten days previous notice of the time and place of such meeting in at least two of the daily newspapers of the said City of Wilmington.

Act to take effect from passage thereof.

SEC. 4. This Act shall take effect from the date of its passage and within sixty days thereafter it shall be the duty of every person who at the time of the passage of this act shall have been engaged for the period of two years or more, either as journeyman or proprietor, in the business or occupation of a barber in said City of Wilmington, to cause his or her name and residence or place of business to be registered with said Board of Examiners. The statement of every such person so registering shall be verified under oath before a Notary Public of this State, and shall set forth his or her name and residence or place of business and the length of time he or she has acted or served as barber. Every person who shall be so registered with said Board as a barber, shall pay to the Treasurer of said Board the sum of two dollars and shall be entitled to receive from said Board a certificate as a barber, and shall pay annually the sum of one dollar for a renewal of said certificate.

To register within 60 days thereafter.

Registration fee.

Annual fee.

SEC. 5. Any person not within the provisions of Section 4, or not registering thereunder, desiring to obtain a certificate of registration under this Act, shall make application to said board thereof, and shall pay to the Treasurer of said board an examination fee of five (5) dollars, and shall present himself at the next regular meeting of the board for the examination of applicants, whereupon said board shall proceed to examine such person, and being satisfied that he is above the age of nineteen years, of good moral character, free from contagious diseases, that he has either studied the trade for at least three

Examination fee.

Qualifications to.

years as an apprentice under a qualified and practicing barber; or has practiced the trade in another State for at least two years, and is possessed of the requisite skill in said trade to properly perform all the duties thereof, including his ability in the preparation of tools, shaving, hair cutting and all the duties and services incident thereto, his name shall be entered by the board in the register hereinafter provided for, and a certificate of registration shall be issued to him authorizing him to practice said trade in said City of Wilmington, which said certificate shall be good for one year. All persons who shall have passed a successful examination before said board shall be entitled to receive from said board a certificate thereafter annually upon the payment of a fee of one dollar.

Compensation of members of Board.

SEC. 6. Each member of said Board shall receive a compensation of five dollars per day, for actual services, which compensation shall be paid out of the moneys in the hands of the Treasurer of said Board; provided, that said compensation shall in no event be paid out of the State Treasury.

Not more than one apprentice to one barber.

SEC. 7. Nothing in this Act shall prohibit any person from serving as an apprentice to said trade under a barber authorized to practice the same under this Act; provided, that in no barber shop in said City of Wilmington shall there be more than one apprentice to one barber authorized under this Act to practice said occupation.

Definition of apprentice.

An apprentice within the meaning of this Act is any one who has entered into the employment of a qualified barber for a fixed term in order to learn the trade or art of barbering. Every apprentice in the said City of Wilmington in order to avail himself of the provisions of this Act must file with the Secretary of said Board a statement in writing showing the name and place of business of his employer, the date of the commencement of employment with him, and his full name and age, and shall pay into the Treasury of said Board a fee of fifty (50) cents.

Board to furnish certificate of registration.

SEC. 8. Said Board shall furnish to each person to whom a certificate of registration is issued, a card or insignia good

for the year, for which the same is issued bearing the signatures of its President and Secretary, certifying that the holder thereof is entitled to practice the occupation of barber in said city, and the year for which it is issued printed in large figures; and it shall be the duty of the holder of such card or insignia to post the same and any renewal thereof in a conspicuous place in front of his working chair, where it may be readily seen by all persons whom he may serve.

Where posted.

Board to keep register.

SEC. 9. Said Board shall keep a register in which shall be entered the names of all persons to whom certificates are issued under this Act and said register shall be at all times open to public inspection.

Definition of the occupation of a barber.

SEC. 10. To shave or trim the beard or cut the hair of any person for hire or reward received by the person performing such service or any other person shall be construed as practicing the occupation of barber within the meaning of this Act.

Unlawful to follow the occupation without certificate.

SEC. 11. It shall be unlawful for any person to follow the occupation of a barber without the certificate of said Board of Examiners. *Provided further* that all persons making application for examination under the provisions of this Act shall be allowed to practice the occupation of barbering until the next regular meeting of said Board.

SEC. 12. It shall be unlawful for any person to follow the occupation of a barber without the certificate of said Board of Examiners. *Provided further* that all persons making application for examination under the provisions of this Act shall be allowed to practice the occupation of barbering until the next regular meeting of said Board.

Violation of Act.

SEC. 13. Any person violating the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof before any Justice of the Peace residing in the said City of

Wilmington or by the Municipal Court of the City of Wilmington shall be fined not less than five nor more than fifty dollars, and any convicted person who shall refuse or neglect to pay such fine may be imprisoned in the county jail until such fine is paid, not exceeding, however, twenty days. Penalty for.

Approved March 9, A. D. 1901.

AN ACT to authorize the Mayor and Council of Wilmington to indemnify and keep harmless E. I. duPont de Nemours and Company, its successors and assigns, from all liability for damage to property, real or personal, or for personal injury, or loss of life, occasioned to property or persons while using, or being on the Water Tower in Rockford Park, in the City of Wilmington, or on ground contiguous thereto, by reason of explosion occurring on, or near the property now or hereafter belonging to said Company. 22 D. L. 829.

WHEREAS, Certain lands have been conveyed by the late firm of E. I. duPont de Nemours and Company to the Mayor and Council of Wilmington to be held in trust forever under certain provisions in said trust deed set forth, said lands being near to certain other lands now belonging to E. I. duPont de Nemours and Company, a corporation existing under the laws of the State of Delaware; Preamble.

AND WHEREAS, The Mayor and Council of Wilmington has caused to be built and erected upon said lands in Rockford Park so conveyed to it a certain water tower, and is desirous of having the said lands, and the said water tower, open for the use and entertainment of the public, notwithstanding the provisions contained in said deed conveying the same to the said Mayor and Council of Wilmington; Preamble.

AND WHEREAS, The E. I. duPont de Nemours and Company have expressed a willingness to waive the condition and provision of said deed, in relation to the said lands, provided the said Mayor and Council of Wilmington shall indemnify and forever save harmless the said E. I. duPont de Nemours and Company, its successors and assigns, of, and from all lia- Preamble.

bility for damage to property, real or personal, or for personal injuries, or loss of life resulting to persons, or property, while using or upon said lands and premises, by reason of any explosions occurring in the mills, or on other property now or hereafter of the said Company;

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met (two-thirds of the members of each branch thereof concurring therein):

Indemnity of E. I. du Pont de Nemours and Company.

SECTION 1. "That the Mayor and Council of Wilmington be, and it is hereby given full power and authority and is hereby fully authorized at any time hereafter to indemnify and keep harmless the said E. I. duPont de Nemours and Company, its successors and assigns, of, and from all liability for damage or injury to property, real or personal, or for personal injury, or loss of life happening to property or persons while on the lands and pemises mentioned in the said deed, by reason of any explosions occurring on, or near property now or which may hereafter belong to said E. I. duPont de Nemours and Company, its successors or assigns."

Approved March 31, A. D. 1903.

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22 D. L. 845. *AN ACT Concerning the employment of certain persons by the Municipal Corporation of the City of Wilmington, by making eight hours, a day's work.*

Eight hours legal day's work.

SECTION 1. That eight hours shall constitute a legal day's work for all classes of employees employed by the Municipal Corporation of the City of Wilmington.

Contract to stipulate same.

SEC. 2. That each contract to which the municipal corporation of the City of Wilmington is a party which may involve the employment of laborers, workmen or mechanics shall contain a stipulation that no laborer, workman or mechanic in the employ of the Municipal Corporation of the City of Wilmington, contractor, sub-contractor, or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be required to work more than

eight hours in any one calendar day, except in cases of extraordinary emergency caused by fire, flood or danger to life or property.

Wages not to be less than prevailing rate in the locality where work is done.

SEC. 3. That the wages to be paid for a legal day's work as hereinbefore defined to all classes of such laborers, workmen or mechanics, upon all such public work or upon any material to be used upon or in connection therewith shall not be less than the prevailing rate for a day's work in the same trade or occupation in the locality in the State where such public work, on, about or in connection with which such labor is performed in its final or completed form is to be situated, erected or used. Each such contract hereafter made shall contain a stipulation that each such laborer, workman or mechanic employed by such contractor, sub-contractor or other person on, about or upon such public work shall receive such wages as hereinbefore provided. Each contract for such public work hereafter made shall contain a provision that the same shall be void and of no effect unless the person or corporation making or performing the same shall comply with the provisions of this Act; and no such person or corporation shall be entitled to receive any sum nor shall any officer, agent or employee of the Municipal Corporation of the City of Wilmington pay the same or authorize its payment from the funds under his charge or control to any such person or corporation for work done upon any contract which in its form or manner of performance violates the provisions of this Act.

Contract to stipulate wages.

Contract void unless so made.

Penalty for evasion of.

SEC. 4. That any officer, agent or employee of the Municipal Corporation, of the City of Wilmington, having a duty to act in the premises, who violates, evades, or knowingly permits the violation (of)[1] evasion of any of the provisions of this act, shall be guilty of malfeasance in office and shall be suspended or removed by the authority having the power to appoint or remove such officer, agent or employee, otherwise by the Governor. Any citizen of this State may maintain proceedings for the suspension or removal of such officer, agent or

1. Printed as enrolled.

employee or may maintain an action for the purpose of securing the cancellation or avoidance of any public contract which by its terms or manner of performance violates this Act or for the purpose of preventing any officer, agent or employee of such municipal corporation from paying or authorizing the payment of any public money for work done thereupon.

Exemption.

SEC. 5. This act shall not apply to the policemen, park guards, watchmen, or special officers of any kind.

Approved April 7, A. D. 1903.

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24 D. L. 134.

AN ACT Authorizing Counties, Municipalities and Corporations to Donate Money, Land and Other Valuable Things for the Improvement of the Organized Militia of Delaware.

Any municipal body authorized to donate lands, &c., to organized militia.

SECTION 1. That from and after the approval of this Act, any county, municipality or corporation in this State, may, and the same are hereby authorized and empowered to appropriate (*a*) money out of the treasury of such municipality, county, corporation or to donate any other valuable thing, or to grant or lease any land belonging to them, for the purpose of aiding in the improvement of the Organized Militia of Delaware.

(*a*) As to appropriations, generally, by a municipality or county, see Art. VIII, Sec. 8 of the Constitution of 1897.

Donor may direct use of gift.

SEC. 2. That the money so appropriated, or other valuable thing donated, or the land so granted or leased shall be appropriated, donated, granted or leased to the State Military Board, and expended or disposed of by said Military Board in such manner, and under such conditions, as the donor may direct.

Approved March 29, A. D. 1907.

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24 D. L. 113.

[1]*AN ACT in Relation to Dogs Registered in Incorporated Towns and Cities in New Castle County.*

SECTION 1. That every person residing within the limits

1. See Ordinances, passed February 16, 1865, and June 27, 1895, p. 975 this volume.

of any incorporated Town or City in New Castle County and owning any dog or dogs, whether male or female, which have been assessed or registered in accordance with any law or ordinance of such Town or City and who have paid a tax or registration fee thereon shall have property (a) in the same and be entitled to sue for and recover any damages that may accrue in consequence of the loss or injury thereof. Dogs registered in New Castle Co. declared property.

(a) As to registration of dogs, and when one has property in the same, see pages 548, 975 and 977 this volume.

SEC. 2. This Act shall be taken and deemed to be a public Act and printed as such.

Approved March 1, A. D. 1907.

AN ACT to amend Chapter 411, Volume 14, Laws of Delaware, entitled "An Act to Protect the People from the Dangers resulting from the use of Petroleum, Coal Oils and Burning Fluids," by Increasing the Fire Test and providing for the method and manner of making such tests, and by whom such tests shall be made. 24 D. L. 305.

SECTION 1. That Section 1 of the said Act be and the same is hereby amended by striking out all of said section and inserting in lieu thereof, the following: Chapter 411, Volume 14, amended.

"SECTION 1. That on and after the first day of July next, it shall not be lawful to sell, or offer for sale, within the limits of this State, any kerosene, headlight or other oil for illuminating purposes produced from petroleum, which will not bear the fire test of at least one hundred and fifteen (115) degrees Fahrenheit. Said fire test shall be determined by the use of the Tagliabue instrument or apparatus in method and manner as follows: Partially fill the metal cup with water about sixty (60) degrees Fahrenheit temperature, leaving room for displacement by the glass oil cup; fill the glass oil cup with the oil to be tested, to within one-quarter ($\frac{1}{4}$) of an inch of the top of the cup, remove all oil from the top edge of the cup, using soft paper for such purpose; see that surface of oil in the cup is free from air bubbles; suspend the thermometer with the bulb just below the surface of the oil; heat with a Sale of certain coal oil prohibited. "Fire test," how made.

small alcohol flame; when the thermometer indicates one hundred (100) degrees Fahrenheit; remove flame and allow temperature to run up to one hundred and three (103) degrees Fahrenheit: at which point try for flash with small bead of fire on the end of a string, or otherwise, held not less than one-quarter ($\frac{1}{4}$) of an inch above the surface of the oil; if the oil does not flash, or if it flashes and does not continue to burn, replace flame, work temperature up four (4) degrees Fahrenheit more, then remove flame, allow temperature to run up three (3) degrees Fahrenheit more and again try to flash; if the oil flashes, or if it flashes and does not continue to burn, repeat this operation until one hundred and fourteen (114) degrees Fahrenheit are reached, at which point, if the oil does not flash, or if it flashes and does not continue to burn, it shall be deemed and considered as of not less than one hundred and fifteen (115) degrees fire test; but the oil thus tested shall not be deemed or considered as of not less than one hundred and fifteen (115) degrees fire test if it flashes and continues to burn at one hundred and fourteen (114) degrees Fahrenheit, or at a lower temperature. The temperature in making the test as above set forth shall not be raised or allowed to rise in any instance faster than two (2) degrees Fahrenheit per minute."

SEC. 2. That Section 2 of said Act be and the same is hereby amended by striking out all of said section and inserting in lieu thereof, the following:

State Chemist to make said tests.

"SECTION 2. That it shall be the duty of the State Chemist of this State to make tests in the method or manner as provided in Section 1 of this Act, to determine the fire test of any sample of kerosene, headlight or other oil for illuminating purposes produced from petroleum, sold or offered for sale in this State, which any citizen thereof may forward to the State Chemist for such test; provided that each sample so sent shall not be less in quantity than one (1) pint, and shall be forwarded by express, charges prepaid, contained in a glass, earthen or metal receptacle which has not been used to contain any other substance, securely sealed and accompanied by a fee of one dollar; and if such sample stands the

Proviso.

Sample, quantity of and how delivered.

Fee for test.

legal fire test above described, and will not burn below one hundred and fifteen (115) degrees Fahrenheit, the State Chemist may retain said one dollar as a fee, but in event of said sample failing to stand said legal test, by burning below one hundred and fifteen (115) degrees Fahrenheit, the said one dollar shall be returned to the sender, and a fee of ($5.00) five dollars charged against the dealer from whom said sample has been obtained, which shall be collected in the same manner as fines are collected, subject to the same rights of appeal.

By whom paid.

The State Chemist shall have the right to take from any reservoir, tank, barrel, can or other receptacle in this State used for holding or storing kerosene, headlight or other oil for illuminating purposes produced from petroleum, a sample not exceeding one (1) pint from any such receptacle, for the purpose of submitting and subjecting such oil to a fire test as herein provided in Section 1 of this Act.

State Chemist may sample any receptacle for fire test.

It shall be the duty of the State Chemist when a sample so tested, of kerosene, headlight or other oil for illuminating purposes produced from petroleum shall be found to be of a fire test less than that required by the provisions of this Act, to report the fact to the Attorney General of this State, giving the name of the owner or owners of the oil in any reservoir, tank, barrel, can or other receptacle from which the sample so tested was taken, together with a certificate showing the result of such fire test; and it shall be the duty of the Attorney General of this State, upon receipt of such report and certificates from the State Chemist, to proceed under the provisions of this Act in a court of competent jurisdiction against the owner or owners of such kerosene, headlight or other oil for illuminating purposes produced from petroleum, from which the sample so tested was taken, if such owner or owners be individuals, and against the officers thereof if the owner of such oil be a domestic corporation, and against the resident agent in this State if the owner of such oil be a foreign corporation or nonresident individual or copartnership; and the penalty for violating any of the provisions of this Act shall be, upon con-

Duty of State Chemist to report to Attorney General name of dealer selling oil under legal test.

Duty of Attorney General to prosecute.

Penalty for violation of Act.

viction, a fine of not more than two hundred dollars, in the discretion of the Court."

Approved March 15, A. D. 1907.

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24 D. L. 318. *AN ACT Authorizing the Regulator of Weights and Measures in and for New Castle County to Inspect and Stamp Cans used for the Shipment of Milk and Cream.*

Regulator of Weights and Measures to inspect milk cans.

SECTION 1. It shall be the duty of the Regulator of Weights and Measures in and for New Castle County, to inspect, when requested so to do, by the owner or owners thereof, all cans used for the shipment of milk or cream, and to stamp on each can so inspected by him, in letters three-eighths of an inch in height, a mark of inspection, showing by whom inspected and its capacity in quarts, according to the standard measure for milk and cream in this State at the time of such inspection.

Compensation of Regulator.

SEC. 2. For inspecting each can and stamping, as provided in Section 1 of this Act, the said Regulator of Weights and Measures, in and for New Castle County, shall be paid by the owner or owners thereof at the time of such inspection, the sum of Ten Cents.

Approved March 29, A. D. 1907.

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24 D. L. 319. *AN ACT to Determine the Standard Measure of Milk and Cream in this State.*

Standard measure for mil.

SECTION 1. That from and after the approval of this act, the standard measure of milk and cream in this State shall be fifty-seven and seventy-five one-hundredths cubic inches for each and every quart thereof; and when sold, with no special agreement as to the measurement thereof, the quart shall consist of fifty-seven and seventy-five one-hundredths cubic inches.

Approved March 4, A. D. 1907.

AN ACT to Authorize the Mayor and Council of Wilmington to Exact Licenses for the Operation of Pool Rooms, Billiard Rooms and Bowling Alleys.

25 D. L. 318.

SECTION 1. That the Council of the Mayor and Council of Wilmington be and it is hereby authorized to adopt ordinances providing for the licensing of pool rooms, pool tables, bowling alleys, billiard rooms and billiard tables, open to public use within the City of Wilmington, and said Council may make all necessary rules and regulations and provide necessary penalties for the enforcement of such ordinances and the collection of such license fees.

To provide for the licensing of public billiard and pool rooms.

Penalties.

Fees.

Approved April 5, A. D. 1909.

AN ACT Repealing All Acts Directing Appropriations to be Made to the Several Fire Companies of the City of Wilmington, and Authorizing the Council of Wilmington to Contract with Fire Companies for the Protection of Property Against Fire.

SECTION 1. That Section 68, Chapter 207, Volume 17; Section 1, Chapter 177, Volume 18; Chapter 95, Volume 20; Chapter 549, Volume 20; Chapter 554, Volume 20; Section 8, Chapter 556, Volume 20; Chapter 560, Volume 20; Section 2, Chapter 109, Volume 21; Chapter 174, Volume 22 and Chapter 399, Volume 22, Laws of Delaware, and all other Acts or parts of Acts authorizing and directing appropriations of money by the Council of the City of Wilmington to or for any of the Fire Companies of said City or for ambulance service be and the same are hereby repealed.

Certain Acts repealed.

SEC. 2. That from and after the passage of this Act, the Council of the Mayor and Council of Wilmington are hereby authorized and empowered to make annual contracts, (*a*) for the protection of all property in the said City of Wilmington against fire with the several fire companies of the City of Wilmington and State of Delaware now in existence, or hereafter created, and recognized by the Council as a part of the fire department of the said City of Wilmington; the amount allowed by said contract with any company shall be in the discretion of

Mayor and Council empowered to make annual contracts.

Amount allowed in the discretion of Council.

Proviso.

the Council; *provided, however,* that the amount named in said contract shall not be less than the amount now appropriated by the Council to the respective companies.[1]

(*a*) Under Sec. 68 of the Charter of 1893, "The Council" used to make *appropriations* to fire companies.

SEC. 3. All Acts or parts of Acts inconsistent herewith are hereby repealed and this Act shall be deemed and taken as a public Act.

Approved April 7, A. D. 1909.

AN ACT Defining Motor Vehicles and Providing for the Registration of the Same and Uniform Rules Regulating the Use and Speed Thereof.

Motor vehicles must be registered.

SECTION 1. That, except as hereinafter provided, no motor vehicle shall be operated or driven upon any public street, road, turnpike or highway in this State until the said motor vehicle shall have been registered with the Secretary of State.

Renewed annually.

SEC. 2. Every resident of this State who is the owner of a motor vehicle, and every non-resident, except as hereinafter provided, shall, annually, apply to the Secretary of State for

Application shall contain name, address and description of motor.

the registration of the said motor vehicle. The application shall contain the name, place of residence and correct post-office address of the owner, with a brief description of the motor vehicle, stating the name of the maker, manufacturer's number and character of the motive power and rated horse

How made.

power. The said application shall be made upon a blank provided for the purpose by the Secretary of State. It shall be signed by the owner and shall be verified by oath or affirma-

Fee for registration.

tion. Upon receipt of the application and a fee of three dollars for a motor cycle and a fee of five dollars for any other motor vehicle, the Secretary of State shall register the said

Registration certificate.

motor vehicle in a book to be kept for that purpose, and shall

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1. For amounts of appropriations to Fire Companies prior to this Act, see appendix.

issue to the owner a registration certificate and the Secretary of State at the expense of the State shall provide two number tags containing the registration number, the figures of which shall not be less than five inches in height, and the abbreviated name of the state and the year. *Provided, however,* that non-residents of this State shall be entitled to the same exemptions from the provisions of this Act as are granted to the citizens of this State by the laws of the State in which said non-residents reside.

Number tags.

Exemption of non-residents.

The fees provided for by this Act shall include all the fees due the Secretary of State upon any license or certificate provided for by this Act.

All fees included.

SEC. 3. No motor vehicle shall be operated upon any public street, road, turnpike or highway unless the number tags are carried conspicuously, one on the front and the other on the rear of the motor vehicle in such manner that they may be easily read. They shall be parallel to the axles of the motor vehicle, and shall be kept free from oil, grease, dirt or other substance likely to impair their legibility; and between one hour after sunset and one hour before sunrise, the rear number tags shall be illuminated so that the number can be plainly distinguished when the motor vehicle is in use. Provided that when used upon the motor cycle the number tags shall be attached so that they may be plainly read from both sides of the said motor cycle instead of being attached to the front and rear; and provided further that the requirements as to illuminating the rear number tag shall not apply to motor cycles. Not more than one set of number tags shall be displayed upon any motor vehicle, except as provided in Section 2 for non-residents. No owner or operator of any motor vehicle shall be subject to fine or arrest when one number tag is missing, provided he makes affidavit that the same has been lost or removed without his knowledge or consent, and that he will promptly provide a new tag.

Number must be on front and rear of vehicle.

Shall be illuminated between certain hours.

How attached to motor cycle.

Owner or operator not subject to fine or arrest

SEC. 4. No person, except as provided for non-residents in Section 2, shall operate a motor vehicle other than a motor cycle, upon the public streets, roads, turnpikes or highways of

Must obtain a license.

No license issued to any one under 16 years of age.

Application, how made.

this State unless he has first obtained from the Secretary of State a license. (*a*) No license shall be issued to, nor shall any motor vehicle be operated by any person under sixteen years of age. Applications for license shall be made in writing upon a blank furnished by the Secretary of State, and shall contain the name of the applicant, his place of residence, including City or Town, street and number, and his post-office address, and shall state that he is over sixteen years of age and is qualified to operate a motor vehicle. It shall be signed by the applicant's own hand and verified by oath or affirmation. Upon receipt of the application and a fee of five dollars, the Secretary of State shall issue to the applicant a license. The license shall contain the licensee's name and residence, and the date and number of the license, and shall be carried by the licensee at all times when operating a motor vehicle.

(*a*) In the case below cited, the Court held that if one operated a motor car without a *license* as prescribed in the above section, it was negligence per se.

Cecchi vs. Lindsay, 1 Boyce 185 at 189. (yr. 1910)

May be issued at any time, but ceases to be effective at end of year.

Certificate not transferable.

Registration shall expire upon transfer of ownership.

Shall notify Secretary of State and return certificate.

Old number restored within two months.

SEC. 5. Motor vehicles may be registered and licenses issued at any time during the year, but all registration and licenses shall cease to be effective on the thirty-first day of December of the year issued. A registration certificate or license issued to one person shall not be transferred to another person, and no operator's license shall be issued to a firm or corporation nor in the name of more than one person. Upon the transfer of ownership of any motor vehicle, its registration shall expire, and it shall be the duty of the person in whose name such vehicle is registered to immediately notify the Secretary of State of the name and address of the new owner, and to return to the said Secretary of State the registration certificate for the vehicle so transferred. Should the original owner make application for the registration of another motor vehicle within the period of two months, accompanied by a fee of one dollar, he shall be assigned the number previously issued to him.

Manufacturers or dealers shall register in the "dealers' class."

SEC. 6. Motor vehicles, operated by manufacturers or dealers for the purpose of testing or selling, shall be exempt from the necessity of individual registration, provided said manufacturer or dealer registers with the Secretary of State

in the "dealer's class." Application for such registration stating the number of cars to be registered, shall be made upon a blank provided for the purpose by the said Secretary of State which shall state the name and business of the applicant, and shall be verified by oath or affirmation. Upon receipt of the application and a fee of five dollars for each car to be registered, the Secretary of State shall issue to the applicant a certificate of registration, and the manufacturer or dealer shall provide a pair of number tags which shall contain numbers of registration in figures not less than five inches in height, the year and the words "Delaware Dealer." Such car shall be operated only by licensed drivers who shall have authority to operate motor vehicles bearing the said tags for testing or demonstrating purposes or for hire.

Application for such, how made.

SEC. 7. No person when intoxicated shall operate a motor vehicle under penalty of a fine of not more than One Hundred Dollars or imprisonment not exceeding thirty days, or both. Any Justice of the Peace of the State or the Judge of the Municipal Court of the City of Wilmington shall have power and jurisdiction to hear and determine the offense created by this section.

No intoxicated person shall operate motor vehicle.

Justice of the Peace, or Judge of Municipal Court, shall have jurisdiction.

SEC. 8. No person having been licensed shall operate a motor vehicle under another license, nor operate an unregistered motor vehicle. No motor vehicle shall be operated under any other number than that of its own registration.

Shall operate under proper license and number.

SEC. 9. Every motor vehicle shall be provided when in use with good and sufficient brakes, and with a horn, bell or other signal device,(a) which shall be sounded whenever necessary to insure the safety or other uses of the highway. Motor vehicles shall, from one hour after sunset until one hour before sunrise show at least one white light visible not less than two hundred feet in the direction toward which the motor vehicle is proceeding, and one red light shall be shown visible in the opposite direction.

Motor vehicle shall have proper brakes and signal. White and red lights.

(a) Section 9 of the above Act was Sec. 4 of the Act of 23 D. L. Ch. 123. In speaking of it the Court said:

Boyce, J.: "If you find that the plaintiff was unfamiliar with the safety appliances, and by reason thereof failed to use in

a reasonable and prudent manner the brakes of his automobile to prevent a collision with the car * * he was guilty of negligence,'' &c.

Garrett vs. Peoples Ry., 6 Penn. 29 at 34. (yr. 1906)

Use of chains prohibited, except when necessary.

SEC. 10. The use of chains on the wheels of motor vehicles is prohibited, except on highways of natural dirt, plank, asphalt, cobble, brick, Belgium block, or on at least one inch of ice or hardened snow, except in cases where the condition of other highways is such as to render their use necessary for the safety of the users of the highway.

Reasonable warning of approach shall be given.

SEC. 11. Upon approaching any person walking upon the public highways, or a horse, horses, or other draft animals being led, ridden or driven, the operator of the motor vehicle shall give reasonable warning (*a*) of his approach and use every precaution to avoid injuring such person or frightening such animals, bringing his motor vehicle to a stop, should such animals appear to be unmanageable, stopping his engine, if the occasion require it, until such animals (have) had sufficient time to pass. In case of injury to person or property due to the operation of a motor vehicle, the operator of said vehicle shall stop, and upon the request of the person injured, or in whose custody such property then was, give his name and address, and that of the owner of said motor vehicle.

In case of injury to persons or property operator shall stop, and upon request give name and address.

(*a*) The law as to the degree of care one should use in operating an automobile, is laid down as follows:

Pennewill, C. J.: ''The owner of an automobile has the same right as the owner of other vehicles to use the highways or streets of a city, and like them he must exercise reasonable care and caution for the safety of others. * * It is the duty of the person operating an automobile * * to move it at a reasonable rate of speed, and cause it to slow up or stop if need be, where danger is imminent,'' &c.

Hannigan vs. Wright, 5 Penn. 537 at 540-1. (yr. 1905)

In speaking of the chauffeur, in the above case, the Court said: ''The acts of the chauffeur, in operating an automobile, within the authority of his employment, are the acts of a servant. The relation of master and servant exists between the chauffeur and his employer, and the rules of law applicable to that relation apply.'' id 540.

See, also, on the question of the owner's liability for the acts of his chauffeur, the case of

Simeone vs. Lindsay, 6 Penn. 224 at 299. (yr. 1907)

Motor shall be stopped at request or upon signal.

SEC. 12. Every person driving a motor vehicle shall, at request or upon signal by putting up the hand or otherwise from a person riding or driving a horse or horses in the opposite direction, cause the motor vehicle to stop and remain sta-

tionary so long as may be necessary to allow said horse or horses to pass on.

Motors and other vehicles shall keep to the right upon approaching each other.

SEC. 13. Whenever a person operating a motor vehicle, or any person riding, driving or leading a horse, horses or other draft animals, shall meet any other vehicle or other draft animals, the operators, drivers or person having such animals in charge, shall reasonably turn to the right (*a*) of the center of the said highway, so that such vehicle or animals may pass without interference, and the driver of any vehicle overtaking any other vehicle or draft animals being led, ridden or driven upon any public highway, shall pass to the left thereof, the driver of such vehicle or persons having charge of such animals so overtaken shall turn to the right of the center of the road to allow free passage to the left.

(*a*) As to the general law of the road * * i. e., in regard to keeping to the right, see p. 200 of this volume.

Rate of speed.

SEC. 14. The following rates of speed may be maintained but not exceeded. Upon any public street or highway where the buildings are less than an average distance apart of one hundred feet, a rate of speed of one mile in five (*a*) minutes shall be permitted, but not exceeded, which, however, shall be reduced to the (rate) of one mile in ten minutes at curves and at intersections of other streets or highways. Upon any public street or highway where the buildings are of greater distance apart than one hundred feet, at a rate of speed of one mile in three minutes shall be permitted, but not exceeding, but this rate of speed shall be reduced to one mile in five minutes at all curves, intersecting roads, in descending steep hills, and in passing other vehicles, providing that nothing in this section shall permit any person to drive a motor vehicle at a greater rate of speed than is reasonable, having regard to the traffic, or so as to endanger the safety of any person or injure the property of any person; provided further, that motor vehicles used as ambulances, or by physicians responding to emergency calls, or motor vehicles used by the police, fire department or military when in the performance of duty, are exempt from compliance with the provisions of this section.

Certain motors exempt from the provisions of this Act.

(*a*) The prior law contained in 23 D. L. Ch. 23, Sec. 4, made the

speed "one mile in seven minutes." The Court, in the case below cited, set out the section referring to the speed of automobiles, and said:

Boyce, J.: "If you find that the plaintiff * * was driving his automobile at a greater rate of speed than one mile in seven minutes, through a built up portion of the City of Wilmington, where the houses are, and average less than one hundred feet apart, * * he was guilty of negligence," &c.

Garrett vs. Peoples Ry., 6 Penn. 29 at 34. (yr. 1906)

Shall stop at the request of constable or police officer.

SEC. 15. All operators of motor vehicles shall, upon request or signal of any constable or police officer, stop and exhibit their registration certificate or license, and shall furnish to any legally constituted authority all information in their possession as to the identity of the operator or owner of any motor vehicle.

Constables and police officers may arrest.

SEC. 16. The constables and police officers of any city, town or county of this State may arrest upon view and without warrant any person or persons violating any of the provisions of this Act. In the event of an arrest as aforesaid, if the defendant is unable to give sufficient bail for a hearing or for his appearance at Court, the magistrate before whom he is first taken may accept a forfeit, conditioned upon the defendant's appearance as aforesaid, a sum of money equal in amount to the maximum fines which could be imposed under the provisions of this Act, and the costs, or in lieu of such bail or forfeit may accept any article, of sufficient value, or hold in custody the motor vehicle found in the possession of the defendant; and such magistrate, after the trial of the defendant if not sufficient bail according to law has been given in the meantime, shall make such order as to the disposition of such motor vehicle or other articles as to him shall seem just and proper.

Magistrate may accept money or article of sufficient value in lieu of bail.

May hold motor.

Fine imposed for violating the provisions of the Act.

SEC. 17. Any person violating any of the provisions of this Act, shall be subject to a fine of not less than ten nor more than twenty-five dollars to be collected by summary conviction before any Mayor or Justice of the Peace or Judge of the Municipal Court of the City of Wilmington as like fines and penalties are now by law collectible; or in case of non-payment

of a fine to undergo an imprisonment for a period not exceeding ten days. Any person or persons who have been previously convicted before a Mayor, Justice of the Peace of this State, or Judge of said Municipal Court, of any violation of the provisions of this Act, upon commission of a second or subsequent offense within a period of six months shall be sentenced to pay a fine of not less than twenty-five dollars nor more than one hundred dollars, and in case of non-payment of such fine to undergo an imprisonment for a period not exceeding twenty days.

In case of non-payment of fine, ten days' imprisonment.

Penalty increased for second or subsequent offense.

SEC. 18. Any person who has been previously convicted of any violation of the provisions of this Act upon the commission of a third offense within a period of six months shall be sentenced to pay a fine of not less than one hundred dollars nor more than two hundred dollars, or imprisoned for a period not exceeding three months, or both, in the discretion of the Court. Upon the certification of the Secretary of State by any Mayor, Justice of the Peace or said Judge of a third conviction for violation of the provisions of this Act in any one year, the license issued to such person so convicted may immediately be revoked by the Secretary of State, and shall not again be reissued for a period of one year after such revocation.

Penalty further increased for third offense.

License may be revoked.

SEC. 19. Any person convicted under the provisions of this Act shall have the right to an appeal to the Court of General Sessions of the County upon giving bond in the sum of five hundred dollars to the State with surety satisfactory to the Mayor, Justice of the Peace or Judge before whom such person was committed. Such appeal to be taken and bond given within two days from the time of conviction.

Any person convicted may appeal.

SEC. 20. The term "motor vehicle" as used in this Act shall apply to all wheeled vehicles operated by any form of engine, motor or mechanical power, excepting road rollers, traction engines and vehicles which move upon or are guided by a track.

The term "motor vehicle" defined.

Revenue to be paid to State Treasurer.

SEC. 21. The revenue derived from the registration of motor vehicles and the licensing of operators thereof under the provisions of this Act shall be paid to the State Treasurer.

Licenses to continue in effect until Jan. 1, 1910.

SEC. 22. That all registration and licenses in effect at the time of the approval of this Act shall continue in force until the first day of January, A. D. Nineteen Hundred and Ten.

Chap. 124, Vol. 23, and Chap. 144, Vol. 24, repealed.

SEC. 23. That Chapter 124 of Volume 23, Laws of Delaware, and Chapter 144 of Volume 24, Laws of Delaware, be and the same are hereby repealed.

Approved April 29, A. D. 1909.

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22 D. L. 248.

AN ACT in relation to Peddlers within the County of New Castle.

* * * * * * * * * * *

Jurisdiction of offense under this Act.

SEC. 10. All violations of this Act and offenses against same are misdemeanors, and the Municipal Court of the City of Wilmington and the Justices of the Peace in and for New Castle County shall have jurisdiction to hear, try and determine them or any of them upon information lodged therein by the Attorney General of this State, his Deputy, or the prosecuting officer of the Municipal Court or any other person under oath.

* * * * * * * * * * *

Approved March 8, A. D. 1901.

PART IV

Ordinances

OF THE

City of Wilmington, Delaware

ORDINANCES

As Amended and in Force January 1st, A. D. 1910.

CHAPTER I

ORDINANCES RELATING TO CITY OFFICERS.

		Page
1.	Clerk of Council	566
2.	City Auditor	568
3.	City Auditor's Salary	571
4.	Salary for City Auditor's Clerk	571
5.	Providing a Bond for Auditor's Clerk	572
6.	Defining Duties and Fixing Salary of City Solicitor	572
7.	Fixing Compensation of City Solicitor When Away on City Business	574
8.	Concerning Duties of City Treasurer	575
9.	Fixing Salary of City Treasurer's Clerk	576
10.	Bailiff of Council	577
11.	Building Inspector	578
12.	Providing for the Numbering of Houses	579
13.	Empowering Building Inspector to Employ Assistant	580
14.	Amending an Ordinance Providing for the Numbering of Houses	581
15.	Additional Provisions as to Above Requirements	582
16.	Providing for the Numbering of Houses Within Certain Limits	583
17.	Corders and Measurers of Wood	584
18.	Regulating the Weighing of Hay and Other Articles	586
19.	Inspector of Oils and Fluids	588
20.	Inspectors and Measurers of Lumber	591
21.	Plumbing Inspector	592
22.	Gas Inspector	592
23.	Regulator of City Clock	598
24.	Assessors' and Collectors' Clerks	599
25.	Janitor of Municipal Court Room	600
26.	Superintendent of Fire Alarm Telegraph	600
27.	Registry Clerk	601
28.	Salaries of Assistant Engineer, Registry Clerk and Rodman	602
29.	Qualifications of Assistant City Solicitor	603
30.	Salary for Assistant City Solicitor	603
31.	Salary for Deputy City Judge	604
32.	Salaries of Executive Officers of the Board of Health	604
33.	Appointment of Secretary to the Mayor	604
34.	Providing for the Election of Two Rodmen	605
35.	Salary of Clerk of Municipal Court	606
36.	Salary for Clerk of Council	606
37.	City Solicitor's Stenographer	606
38.	Members of Council	607
39.	Unexpired Terms of Office	607
40.	Salary of Certain Officers	608

CLERK OF COUNCIL.

AN ORDINANCE providing for the appointment and prescribing the duties of the Clerk of the Council.

Election of Clerk.

SECTION 1. The Council of Wilmington, at its first stated meeting after the city election, shall elect a person to act as clerk.[1]

Custody of records.

He shall have under his charge the ordinances, records, muniments, and all other papers of this city, and shall safely keep the same. The northwest chamber on the second floor of the City Hall shall be his office, and he shall keep the said ordinances, records, muniments and papers deposited therein, [or in the fireproof safe in the office of the City Treasurer, No. 8 East Sixth street,] unless otherwise ordered by the Council.

Clerk's office.

Nov. 13, 1873.

List of papers kept by Clerk.

A list of said papers, stated alphabetically, shall be signed by every clerk on entering upon his office, and kept by the President of Council.

On the expiration of his office the papers shall be examined and compared with the list delivered to his successor.

Duty in relation to furnishing copies of records.

Penalty.

He shall, upon the application and the payment or tender of a fee, at the rate of one cent for every line of twelve words, and twenty-five cents for his certificate, duly make, certify and deliver a copy of any paper under his charge as aforesaid, upon pain of forfeiting, in case of every default, a fine of thirty dollars.

* * * * * * * * * *

Duty relative to appropriation ordinance.

It shall be the duty of the clerk, upon the passage of every appropriation ordinance, to open separate accounts with the several heads of the general appropriation, and charge them with every order or note drawn on account of said head, before said orders or notes are delivered. He shall credit each

1. For time of election and term of office of Clerk of Council see Act of May 3, 1893. See p. 157 of this volume.

appropriation, under its proper head, with all moneys returned to the city, through the Treasurer, which have been paid out on account of said appropriations, and shall also keep account of all other moneys paid to the Treasurer, as evidenced by the duplicate receipts, and he shall further report to every stated meeting of the Council the unexpended balances to the credit of each head of appropriation.

Duty as to account books.

All account books shall be preserved by the clerk, and handed over to his successor in office.

Duty in relation to orders or notes.

On every order or note given by the direction of Council, he shall endorse in a legible hand the head of appropriation to which said order or note is to be charged by the Treasurer when paid, and for every neglect of the above mentioned duties he shall forfeit and pay a fine of ten dollars.

Duties in relation to stocks, credits, etc., of city.

Duty in relation to appropriation bills, collectors' duplicates, and delinquencies allowed.

It shall be the duty of the Clerk of Council to render to the said Council, annually, at the last stated meeting in December, an accurate list of all the stocks, credits and productive property of the city. He shall, upon the passage of every appropriation bill or ordinance changing such appropriation, give to the City Treasurer a list of the amounts thus appropriated or changed. He shall, when the duplicate of the Collectors are made out, hand to the Treasurer a written statement of the amount of each duplicate. He shall also, in every year, furnish a written statement to the Treasurer of the errors and delinquencies allowed to the Collectors by the Finance Committee, and for neglect of the aforementioned duties he shall forfeit and pay a fine of ten dollars.

Duty relative to entries on lien book.

The Clerk of the Council shall enter upon the lien-book all money paid on account of curbing and paving sidewalks, and paving beds of streets, (a) and credit the account of the person by whom it was paid with the same; such entries to be made by the clerk within ten days after being furnished by the City Auditor with a statement of such payments. The Clerk of the Council shall furnish the Mayor of the city with a

copy of all ordinances, or parts of ordinances that it becomes the duty of the Mayor to enforce. (*b*)

* * * * * * * * * *

(*a*) The Street and Sewer Department, now, has charge of paving, curbing, &c.
See Sec. 119 of the Charter.

(*b*) It is the Mayor's general duty to see that *all* the ordinances of the city are "enforced" and executed. " * * and it shall be his" (the Mayor's) "duty to take care to have the laws and ordinances of the said city faithfully executed." (Charter, Sec. 6.)

Dec. 7, 1882.

[All resolutions passed by the Council that may be of value for future reference, shall be, by the Clerk of the Council, recorded in a book kept in the Clerk's office, styled "Record." In said book there shall also be kept an alphabetical index of all resolutions so recorded, denoting the pages on which they may be found of record.]

Duty relating to "Record" book.

Ordinance. July 25, 1908.

The salary of the said Clerk of the Council shall be [fifteen hundred dollars] per annum, and he shall receive no further compensation for copying the * * * "annual statement," and such other writing or work as Council shall direct.

Salary.

All ordinances prescribing duties for the Clerk of Council, other than those mentioned herein, are hereby repealed.

Passed at City Hall, January 1, 1857.

CITY AUDITOR.

See Charter, Secs. 37-38-39.

AN ORDINANCE for the appointment of City Auditor.

See also Act of April 18, 1883. 17 D. L. 412.

SECTION 1. * * * * * * * * * *

Registry of certificates of city debt.

SEC. 2. The said officer shall register, according to a prescribed form, the number of all transfers of certificates of city debt, their dates, the amount of them, by whom and to whom transferred, the number and amount of the new certificate, the time when it will become due and the date of the ordinance authorizing the loan.

The Auditor shall attest, under his hand, each new certificate issued; and when any certificate shall be cancelled he shall write the word cancelled on it and sign his name as City Auditor thereto. Attest certificates.

Sec. 3. The City Auditor shall examine [weekly, or oftener if required by the Finance Committee,] all orders passed by the Council on the City Treasurer and compare them with acts of Council recorded in their minute book directing such orders. He shall also examine the accounts of the City Treasurer as they appear on the Treasurer's books and compare them with the vouchers thereof, and he shall examine and compare the Treasurer's accounts of all money received by him with the duplicate receipt presented to Council. And should any irregularity or faultiness in the mode of keeping the Treasurer's books be found by the City Auditor, he shall report the same to Council. Ordinance of Jan. 22, 1874. Examine orders and accounts, and compare with vouchers.

[He shall make weekly examinations of the accounts of * * * the Collector of Taxes with the following exception, viz: * * * those of the Collector of Taxes tri-weekly during the months, of July, August and the first two weeks in September, and he shall make report of his examinations to the Council at each stated meeting.] He shall make quarterly examinations of the lien book and report the amount of the city's claim against all persons as recorded therein, and he shall annually report the amount of bonds and notes issued by the city and which remain unpaid. Jan. 22, 1874. Report city's claims.

He shall annually lay before Council the indebtedness of all persons to the city which may have been presented by the respective committees or officers under whose direction the same occurred. Indebtedness of persons.

If called on by any of the standing committees of Council he shall arrange and settle such accounts which they may require of him. Audit accounts for committees.

Sec. 4. He shall be required to enter into bond * * * to the amount of five thousand dollars. * * * * * * * Amount of bond. See Charter, Sec. 38.

Monthly statement to City Council.

SEC. 5. The City Auditor shall lay before the City Council at its first stated meeting in each and every month a statement of all moneys received or collected by him during the month next previous, setting forth the names of the persons, estates or properties paying or yielding the same, together with the dates of such receipts or collections and the sources respectively.

Dec. 21, 1865. Submission of books in May and November to Finance Committee.

[And shall, in the months of May and November of every year, submit his books and accounts to the finance committee whose duty it shall be to examine and report to the Council concerning the same at its meeting during said months.]

Collections from auctioneers and renters.

Feb. 20, 1862.

SEC. 6. The City Auditor shall collect quarterly from the auctioneers the percentage due the city, and all rents, excepting stall and water rents, and perform such other duties as the Council may direct.

June 4, 1868. Examination and endorsement of bills.

SEC. 7. The City Auditor shall examine all bills against the city and endorse them as correct before they are reported to Council for payment.

Books of city accounts.

SEC. 8. The City Auditor shall keep a book or books in which all accounts of the city shall be entered, keeping a debtor and credit account with all persons doing work for, or furnishing goods, or receiving a salary from the city, or becoming indebted to the city in any manner.

Examination of the Clerk of the Municipal Court docket and account of High Constable. Collections of fines and costs.

SEC. 9. The City Auditor shall make monthly examinations of the docket of the [Clerk of the Municipal Court,] also the accounts of the High Constable, each of whom shall render to the Auditor a specific account in writing monthly and collect from them fines, dues or costs that may be in their hands accruing to the city.

Monthly examination of accounts of Clerk of Market, Assessors and Collectors.

He shall also examine monthly the accounts of the Clerk of the Market, Assessors and Collectors and Street Commissioner, also attend to and require auctioneers to take out their licenses regularly according to law, and report to Council on the first stated meeting of each month.

Jan. 22, 1874. The City Auditor shall not transact any but city business in his office during office hours. Office hours. Attendance.

SEC. 10. [The office of the City Auditor shall be occupied by the Auditor alone, and he shall not be allowed to transact any other business therein during his office hours, which shall be from 9 o'clock A. M. to 1 o'clock P. M., and from 2 to 5 o'clock P. M., and it shall be his duty to be in his office on all business days during the aforesaid hours,] except when engaged elsewhere attending to the duties of his office.

Jan. 22, 1874. Deposit of moneys. Certificates of deposit.

SEC. 11. All moneys received by the Auditor shall be deposited by him in the bank in which the city accounts are kept, to the credit of The Mayor and Council of Wilmington, on the day they are received by him at as near the close of bank hours as possible, and he shall take therefor from the bank officers duplicate certificates of deposit, one of which he shall deliver to the City Treasurer immediately thereafter, taking duplicate receipts therefor, one of which receipts he shall forthwith transmit to the Chairman of the Finance Committee, and the other file in his office with the other certificates of deposit.

Passed at City Hall, April 21, 1859.

AN ORDINANCE providing a salary for the City Auditor.

SECTION 1.[1] That from and after the passage of this ordinance, the City Auditor shall receive a salary of Fifteen Hundred Dollars per annum; the same to be payable at the same time, and in the same manner as the salaries of the other city officials are now payable, to take effect July 1, 1908.

SEC. 2. That all ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed.

Approved July 25, 1908.

AN ORDINANCE providing a salary for the City Auditor's Clerk.

Salary of City Auditor's Clerk.

SECTION 1. That from and after the passage of this ordinance the City Auditor's Clerk shall receive a salary, of

1. See Sec. 31, "Third," p. 60, of the Charter.

Twelve Hundred Dollars per annum; the same to be payable at the same time, and in the same manner as the salaries of other city officials are now payable, to take effect July 1, 1908.

SEC. 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Approved July 25, 1908.

AN ORDINANCE to provide for the bonding of the Auditor's Clerk.

Bond.

SECTION 1. That the Auditor's Clerk, hereafter to be elected, shall, within five days after his election, and before entering upon the duties of his office, (*a*) give bond, with warrant of attorney thereto annexed, in the sum of three thousand dollars, conditioned for the faithful performance, by the said clerk, of all the duties of his said office, and the faithful payment to the proper city officers of all moneys belonging to the City of Wilmington which may come into his hands.

Passed at City Hall, May 7, 1885.

(*a*) See the case of Pickering vs. Day, 2 Del. Ch. 333 at 334. (yr. 1866) And see Sec. 11 "a" of the Charter.

CITY SOLICITOR.

AN ORDINANCE providing for the appointment, defining the duties and fixing the salary of a City Solicitor.

See Secs. 40-41 of Charter as amended.

SECTION 1. * * * * * * * * * *

Duties of City Solicitor.

SEC. 2. It shall be the duty of the said City Solicitor to draft all bonds, deeds, obligations, contracts, leases, conveyances, agreements, and other legal instruments of whatever nature, which may be required of him by an ordinance or order of the Council, or which by any ordinance or order may be requisite to be done and made by the City of Wilmington, and which, by law, usage and agreement, the city is to be at the expense of drawing. And further, that he shall, in all matters, do all and every professional act incident to the office that may

Give legal opinion.

be required of him by the City Government or by any standing or special committee thereof, or by any ordinance or order; and he shall, when required, furnish the Mayor, the members of the Council, or any standing or special committee of the Council, the Board of Health or any standing or special committee thereof, or any officer of the City Government or the Board of Health, who may require it in the official discharge of his duties, with his legal opinion on any subject touching the duties of their respective offices. *Provided,* that where, in his opinion, his advice given to any officer might prejudice the interest of the city in future settlements with said officer or his sureties, he may be at liberty to decline giving his opinion to said officer. Proviso.

SEC. 3. It shall be the duty of said City Solicitor, at the request of the [Judge of the Municipal Court] to appear in behalf of the city when cases of violation of city ordinances are before the [Judge of the Municipal Court;] it shall also be his duty to appear for the city in the State courts when such cases are taken to the State courts by writs of *certiorari* or otherwise; (*a*) it shall also be his duty to take charge of all suits in any of the courts of this State in which the city or any of its departments is a party; it shall also be the duty to collect, by process of law, any or all debts due the city that may be placed in his hands for collection by order of the Council. (*b*) Appearance for city in suits.

(*a*) As to other duties in the Municipal Court, see Sec. 17 of the Charter.

(*b*) The above ordinance was passed in 1859, and The Council, then, by and through its committees, had full charge of all city matters. It is different now, and it is the duty of the City Solicitor to act when requested so to do by the various Departments.

SEC. 4. Whenever the corporation of said city shall design to purchase any real property, the title papers shall be furnished to the City Solicitor, and no contract shall be made or money paid on account of such purchase, except under the advice of said Solicitor as to the title of the property in question, and the legal sufficiency of the deeds or other instruments intended to convey the same to the city; and also that all bonds or other written instruments involving the interests Examinations of titles. Approval of bonds.

of the city, to be executed by or passed to the Mayor or other officer of the corporation shall, before they are executed or received, as the case may be, have been examined and approved by the said City Solicitor.

Preparation of ordinances.

SEC. 5. It shall be the duty of the City Solicitor to prepare all ordinances, resolutions and memorials required of him by any committee of the Council, and in the preparation of ordinances it shall be his special duty to so prepare them that they will not conflict with any ordinances still designed to be left in existence.

Report to Council.

SEC. 6. It shall be the duty of the City Solicitor at the stated meeting of Council just previous to the expiration of his term of office, to report in writing to the City Council all the unfinished business in his department, including the names, grounds and stages of progress of all suits pending in which the city is a party or is interested, with the names and results of such suits affecting the city, as may have been decided or adjusted, and such other information as to the business of his department as he may think important or the Council may direct.

Act of March 25, 1907, 24 D. L. 357.
Salary.

SEC. 7. The salary of the City Solicitor shall be [twenty-five hundred dollars per annum] payable monthly. He shall not receive any additional compensation for services rendered the city, except when said services require his absence from the city.

(Original ordinance.)

Passed at City Hall, June 30, 1859.

AN ORDINANCE to fix the compensation of the City Solicitor when called by city business outside the city limits.

Extra compensation.

SECTION 1. The City Solicitor whenever he is called by city business outside the city limits shall receive as compensation in addition to his regular salary, his actual traveling expenses, and the sum of three dollars, ($3.00) per diem, as extra compensation when called out of the city by the instruc-

tions of the Law Committee or the Council and at no other time.

Passed at City Hall, June 23, 1887.

CITY TREASURER.

AN ORDINANCE concerning the duties of the City Treasurer.

Duties of the City Treasurer. See also Charter as amended. Secs. 32-33-34-35-36.

SECTION 1. The City Treasurer shall furnish the Council at each stated meeting, a statement of all moneys received by him during the period between such stated meeting and the one immediately preceding; also a statement of the discount paid upon each note the city may have discounted in bank during said period.

Furnish weekly statements to the Council.

Deposit moneys.

SEC. 2. All moneys belonging to the city, which shall come into the hands of the City Treasurer, shall be by him deposited every day in some incorporated banking institution, or institutions in the City of Wilmington, in the name of The Mayor and Council of Wilmington, and [he shall be required to take from the officers of said institution or institutions, certificates of deposit in duplicate, in form provided by the Council, one of which he shall deliver immediately thereafter to the City Auditor, taking duplicate receipts therefor, one of which he shall file in his office with the other certificates of deposit, and the other he shall deliver to the Chairman of the Finance Committee, and these moneys and all others in the city treasury,] shall be drawn out thereof only on an order signed by the President and Clerk of Council, and countersigned by the City Treasurer and City Auditor, or in case of the absence or temporary disability of either, then by such persons as the Council shall, by resolution, designate for such purpose, and the other three. * * * * * *

Certificates of deposits. Jan. 22, 1874.

Payment of moneys.

Bond.

SEC. 3. The City Treasurer shall, before entering upon the duties of his office, give bond as prescribed in Section (33) of the city charter, in the sum of twenty-five thousand dollars.

* * * * * * * * * *

Sept. 25, 1873. Office. Jan. 22, 1874. Office hours.

SEC. 5. The room [upon the first floor of the building known as number 8, East Sixth street,] now occupied by the City Treasurer, shall in future be the office of the City Treasurer, unless otherwise directed by the City Council. [The office of the City Treasurer shall be occupied by the Treasurer alone, and he shall not be allowed to transact any other business therein during his office hours, which shall be from 9 o'clock A. M., to 1 o'clock P. M., and from 2 o'clock to 5 o'clock P. M., on all ordinary business days.]

Monthly statements. Jan. 22, 1874. Cash book.

SEC. 6. It shall be the duty of the City Treasurer at the end of each month, not later than the second stated meeting thereafter, to make a statement to Council in regard to the finances, giving the amount of money received, amount paid out, the amount of bills payable, the amount of orders on hand and unpaid, and any other information that may be necessary to give Council knowledge of the state of the finances, so that they may not knowingly order work done, when the state of the treasury will not allow it. [It shall also be the duty of the City Treasurer to keep a cash book, in which he shall enter his cash receipts and disbursements, and balance the same daily at the close of his business hours, detailing how said balance is made up.]

Passed at City Hall, February 20, 1862.

AN ORDINANCE fixing the salary of the City Treasurer's Clerk.

BE IT ORDAINED by the Council of Wilmington:

Salary.

SECTION 1. On and after the passage of this ordinance the salary of the City Treasurer's Clerk shall be Twelve Hundred Dollars[1] per annum to be paid monthly in the same manner as other city officers are paid.

SEC. 2. All ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed.

Passed by Council July 22, 1909.

1. For the time of election and term of office of the Bailiff, see Act of May 3, 1893, supra, p. 157.

Returned to The Council unapproved by the Mayor with his reasons August 5, 1909.

Passed by two-thirds (*a*) vote of The Council August 5, 1909.

(*a*) It would be better to state the *number* of votes cast for, and against, the bill.

BAILIFF OF COUNCIL.

AN ORDINANCE providing for the appointment, defining the duties and fixing the salary of the Bailiff of the Council.

Election and term.

SECTION 1. The Council shall, at the first meeting after the city election in every year, elect a person to act as Bailiff[1] of the Council, to serve until the meeting for the next annual election of Bailiff of the Council and until a successor is chosen.

Hours of duty.

SEC. 2. It shall be the duty of the Bailiff of the Council to be at the City Hall every day, except Sunday, from 8 o'clock A. M., to 12 o'clock M. and from 3 o'clock to 5 o'clock P. M. He shall attend and wait upon the council * * * and when such committees shall request, upon committees of the said body at all meetings whenever held.

He shall perform all services relating to the public business of the said body and its committees and of the Mayor, Clerk of the Council. * * * * * * * * * * * *

General duties.

And shall deliver all papers entrusted to him by them for delivery, and, in general, shall perform all services pertaining to the character of his office, as the Council may direct.

Care of City Hall and grounds.

He shall have the care and custody of the City Hall, except the apartments in the basement thereof, and of the grounds belonging thereto, subject to the orders of the Council or Committee on Public Buildings.

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1. See Act of March 25, 1907, 24 D. L. 345, Sec. 32.

On application and the payment of a fee of one dollar, he shall open and light the lower room of the City Hall for the purpose of holding political meetings; but the said room shall not be granted for other than political purposes, unless the expense of lights and fuel be previously paid to the Committee on Public Buildings, and the Bailiff paid for his attendance.

* * * * * * * * * *

He shall sweep and keep in order, shall bring fuel to and make the fires necessary to heat all the rooms of the City Hall above the basement, except the station of the watchman upon the building. He shall remove from the pavements adjacent to the City Hall any snow or hail that may fall thereon, within ten hours between sunrise and sunset after the same has ceased to fall, and when such removal can be made without injury to the pavements. He shall open and prepare any of the apartments of the City Hall and the yard thereof whenever the same shall be properly used for any public purpose. He shall collect all sums due for the use of the City Hall or grounds, and for gas, all fuel, and pay the same to the Treasurer.[1]

Removal of snow.

Opening the apartments of the hall and yard.

Collections for hall and gas.

Salary.

SEC. 3. The salary of the Bailiff of the Council shall be [seven hundred and twenty dollars] per annum, and no further compensation shall be paid him by the Council * * * or directly or indirectly by the city for any services rendered by him under the provisions of this ordinance, or in his official capacity of Bailiff * * * aforesaid.

Passed at City Hall, November 27, 1863.

BUILDING INSPECTOR.

AN ORDINANCE providing for numbering houses within certain limits.

System of numbering houses.

SECTION 1. That the Street Commissioner[2] be, and he is hereby authorized and directed to cause to be numbered the

1. For duties see also Act of May 3, 1893, at p. 157 of this volume.
2. The duty required of the Street Commissioner by this Ordinance is now performed by the Building Inspector.

houses in this city within the limits following; that is to say, the houses between West and Lombard streets, and from Water to Ninth streets, inclusive, and also the houses in Market street, from the Christiana to the Brandywine; and that the number of each house shall be so placed upon the front of said house as to be easily designated.

Commencement.

SEC. 2. The numbering of Market street shall commence at the Christiana, and the numbering of the cross streets shall commence on each side of Market street.

Costs.

Collection.

SEC. 3. The owner or owners of each house so numbered as aforesaid shall be liable for the cost of making and affixing such number, and in case of the owner or owners refusing or neglecting to pay to the Street Commissioner said cost or charge, the amount shall be recoverable by suit before the [Municipal Court] in the same manner as other debts of like amount are recoverable.

Passed at City Hall, August 27, 1847.

AN ORDINANCE providing for the numbering of the houses within the city limits.

Numbering of houses.

SECTION 1. The Street Commissioner[1] shall cause to be numbered the houses in this city in the following manner, viz: For Market street and the streets parallel with the same, the numbering shall commence at the Christiana river and terminate at Front street; after Front street the first number shall be 100, and the numbering shall terminate at Second street; after Second street the first number shall be 200, and the numbering shall terminate at Third street; and so successively at every street the numbering shall be renewed, and the first house after every street shall be designated by a number one hundred more than the first house after the street next south of it. And for the streets running at right angles with Market street, the numbering shall be in the same manner as for Market street and streets parallel with it, but the numbering shall commence at Market street, and the numbers shall extend east and west from Market street by distinct series; the first house

System.

1. The Building Inspector now performs this duty.

east of Market shall be numbered "one," and the first house after King street shall be numbered 100, and the numbering shall be so continued to the eastern limit of the city; and the first house west of Market street shall be number one, and the numbering shall thence be continued to the western limit of the city in like manner as from the east side of Market street.

Expenses of numbering.

SEC. 2. The owner or owners of each house so numbered as aforesaid shall be liable for the cost of making and affixing such number, and in case of the owner or owners refusing or neglecting to pay to the Street Commissioner said cost or charge, the amount shall be recoverable by suit before the [Municipal Court] in the same manner as other debts of the like amount are recoverable.

Passed at City Hall, March 24, 1859.

AN ORDINANCE empowering the Building Inspector for the City of Wilmington to employ an assistant.

BE IT ORDAINED by the Council of Wilmington:

Building Inspector's Assistant.

SECTION 1. That the Building Inspector for the City of Wilmington be, and he hereby is, authorized to employ an assistant for such time as he may deem necessary for the purpose of assisting in renumbering the houses of the City of Wilmington.

Salary.

SEC. 2. That said assistant shall receive the salary of Seventy-five Dollars per month, the same to be payable at the same time and in the same manner as the salaries of other city officials are now payable.

SEC. 3. That all ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed.

Passed at City Hall.

Approved October 10, 1908.

AN ORDINANCE to amend an ordinance entitled "An Ordinance providing for the numbering of the houses within the city limits."

SECTION 1. That the duty heretofore devolving upon the Street Commissioner with reference to the numbering of houses in the City of Wilmington is hereby abrogated, and it is hereby made the duty of the Building Inspector to cause the provisions of all existing ordinances as well as all future ordinances with reference to the numbering of houses in this city to be carried into effect; and the said Building Inspector is hereby put in the place and stead of the Street Commissioner aforesaid. Building Inspector's duties.

SEC. 2. That the houses on Market street south of the Christiana river, and on streets running parallel thereto shall be numbered in the manner following, to wit:

Commencing at Heald street and Christiana avenue with the number one, and continuing thus consecutively until the first cross street (Peach street) is reached, when the numbering shall commence at one hundred (100) and continue therefrom consecutively, until the next cross street (Apple street) is reached, when the numbering shall commence at two hundred (200) and continue therefrom consecutively until the next cross street (Lobdell street) is reached, when the numbering shall commence at three hundred (300) and a like rule shall be observed at the reaching of each consecutive main cross street, until the city line is reached. System of numbering houses.

And with houses situated on streets running at right angles with Market street, the numbering shall commence at Market street and extend east, the same rule being observed with reference to said numbering, as is now provided by law with reference to houses on similar streets lying north of the Christiana river. Streets running at right angles to Market street.

SEC. 3. Christiana avenue shall be numbered in the same manner as streets running at right angles to Market street are numbered, that is, commencing with the same number at Christiana avenue.

Heald street as the streets running at right angles to Market street have at Heald street.

New Castle avenue.

SEC. 4. New Castle avenue shall be numbered in the same manner as streets running parallel to Market street are numbered, that is, commencing with the same number at Lobdell streets as the streets running parallel to Market street have at Lobdell street.

Streets south of Christiana river.

SEC. 5. All streets extending south of the Christiana river parallel with Market street shall have the word "South" prefixed before the name of said street in all cases where such street extends north of the Christiana river.

Provisions of law extended.

SEC. 6. All the provisions of law which are now in force with reference to the numbering of houses within this city are hereby extended and made to apply to the numbering of houses as by this ordinance provided.

Passed at City Hall, December 5, 1889.

AN ORDINANCE to provide for the numbering of houses within the City of Wilmington.

BE IT ORDAINED by The Council of Wilmington:

Building Inspector to direct numbering of houses and changes thereat.

SECTION 1. That it shall be the duty of the Building Inspector, when notified that any error or irregularity exists in the numbering of houses or other buildings in the City of Wilmington, or when notified that houses or other buildings are without numbers, in any street, lane, court or alley of said city, to notify the owner or owners of said houses or other buildings, or in case said owner or owners be non-residents of the City of Wilmington, then the agent or agents for such owner or owners, what the correct number of said houses or other buildings should be according to the existing provisions of law, and any such owner or owners, agent or agents, who shall fail to number such houses or other building as directed by the Building Inspector, within ten days after receiving notice so to do, shall, upon conviction, be subject to a penalty of Five Dollars for each and every such failure, and to an addi-

Penalty for failure to make changes.

tional penalty of One Dollar for each day that such violation of law shall continue after the expiration of said ten days.

Building Inspector to furnish numbers for new houses.

SEC. 2. No person shall place a number on any new house or building or change the number upon any house or other building without first obtaining from the Building Inspector the correct number of such house or other building, and any person who shall violate the provisions of this section shall, upon conviction, be fined the sum of Five Dollars for each and every such offence.

Numbers not to be changed between registration and election.

SEC. 3. No change shall be made in the numbering of any house or other building between any registration day for any general or special election and the day or days of election upon which persons so registered on said registration day would be entitled to vote.

Approved March 16, 1908.

AN ORDINANCE providing for the numbering of houses within certain limits of the City of Wilmington.

Manner of numbering houses on streets running at right angles to Maryland avenue.

SECTION 1. The houses situate on all the streets running at right angles with Maryland avenue, and on the southerly side thereof between the southerly side of Front street and the city line shall be numbered in the manner following, to wit:

The numbering shall commence at the southerly side of Maryland avenue with the number one, and terminate at the first cross street; after the first cross street the first number shall be 100, and the numbering shall terminate at the second cross street, and so successively at every street the numbering shall be renewed, and the first house after every cross street shall be designated by a number 100 more than the first house after the cross street next north of it.

Penalty.

SEC. 2. All the provisions of law which are now in force with reference to the numbering of houses within the City of Wilmington and not inconsistent herewith, are hereby ex-

tended and made to apply to the numbering of houses as provided by this ordinance.

Approved March 2, 1909.

CORDERS AND MEASURERS OF WOOD AND BARK.

AN ORDINANCE to regulate the cordage of wood and bark and to appoint Corders and Measurers thereof.

All wood and bark must be measured.

SECTION 1. All wood and bark which may be brought into (*a*) this city, for sale, shall be measured by such persons as are hereinafter appointed. The person or persons authorized to measure the same shall be guided by the laws of the State, with respect to the dimensions and package of a cord, but shall be the sole judges of the actual measurement of any load of the above mentioned articles. Bark shall be measured on the carriage, the measurer paying due attention to the manner in which it may be packed; but wood shall be packed by the corder; with respect to the quality or condition of either of the before mentioned articles, the parties shall act for themselves.

Regulations.

(*a*) This ordinance relates to wood *brought into* the city for sale. It does not apply to wood sold out of the city. A prosecution for violation of the ordinance should be based upon an allegation to the above effect, viz: a sale in the city. An action was brought in the town of Laurel for an offense where the wording was very similar to the above, and the Court, in construing the "Act concerning wood corders," said:

By the Court: "There is no statement in this record that the cause of action was * * for *buying* or *selling* wood *within* these limits,' &c. The case was dismissed.

Fooks vs. Hearn, 5 Har. 363 at 364. (yr. 1852)

Fees of corder.

For every cord of wood packed and measured as the law directs, the Corder shall receive as follows, viz: For such as comes by water, twelve and a half cents per cord; for such as comes by land, eighteen cents per cord, and in the same proportion for any lesser quantity; and for every load of bark measured as aforesaid, the Measurer shall receive ten cents, to be paid in every instance, one-half by the buyer and one-half by the seller; the Corder of Wood and Measurer of Bark shall retain the whole of these fees.

For every load of wood which shall be brought into this city and unloaded therein, and secured or removed for the purchaser within the space of one hour, without having first given the Corder notice thereof, and permission and opportunity to cord the same, the said purchaser or receiver shall forfeit and pay a fine of fifty cents, to be recovered before the [Municipal Court]. (*a*) And for every load of bark which shall be sold and brought into the city, and unloaded, without having first given the Measurers notice, permission and opportunity to measure the same, before it be unloaded, the purchaser or receiver shall forfeit and pay a fine of fifty cents, to be recovered as aforesaid. Evading the law requiring the measuring of wood and bark.

(*a*) This ordinance was passed in 1856, and at that time the old Mayor's Court had *civil* jurisdiction as well as criminal jurisdiction. (See Sec. 133 "e" of the Charter.)

Any owner or person having the charge of any load of wood or bark, who shall sell or dispose of the same, contrary to the stipulations of this ordinance, shall forfeit and pay the like fines as are imposed on the purchasers and receivers of such wood and bark, to be recovered as aforesaid. Fine.

SEC. 2. The city shall be divided into two districts, viz, an upper district, embracing all the city lying north of Fourth street, and a lower district, embracing all of the city lying south of Fourth street. As far as relates to wood landed from vessels or delivered from the cars on the railroad, the said lower district shall be subdivided into two districts [by a line extending by the westerly side of Walnut street to the southerly side of Water street; thence, by the southerly side of Water street to the dividing line now existing between the lands of the Philadelphia, Wilmington and Baltimore Railroad Company and the lands of George and George W. Bush; thence, by the said dividing line and in the direction thereof to the city limit at the southerly side of the Christiana river.] Cording districts and their limits. Sept. 3, 1863.

For each of these districts, viz: the upper and the two subdivisions of the lower, there shall be appointed, annually, by the Council [on the first regular meeting] in July, a Wood Corder, who shall be duly qualified to perform faithfully the Appointment of wood corders. June 19, 1884.

duties of his office, before he enters upon the performance of the same.

Penalty for intruding beyond district.

No Wood Corder shall cord wood or exercise duties appertaining to his office, in a district other than the one for which he is appointed, under a penalty of one dollar, to be recovered as aforesaid.

Settlement of disputes.

In case any dispute or dissatisfaction shall grow out of the decision of the Wood Corders hereby appointed, the person so disputing or dissatisfied shall have the privilege of calling in the other Corders, who shall review the measurement, and whose decision, or the decision of a majority thereof, shall be final and conclusive between the parties.

Fees of arbitrators.

Such corders as may be called in to decide such disputes shall be paid three cents per cord each, by the Corder whose decision is questioned, if their decision is in favor of the person or persons who appeal, and by the appellants if in favor of the original Corder.

Passed at City Hall, November 13, 1856.

WEIGH MASTERS.

AN ORDINANCE to regulate the weighing of hay and other articles.

Election and duty of Weigh Masters.

Appointment and qualifying of deputies.

SECTION 1. The Council shall, annually, choose one or more persons to act as Weigh Masters, whose duty it shall be to weigh all hay exposed for sale in the city, or sold previous to its arrival. They shall have power to appoint deputies, who, as well as the Weigh Masters shall before entering upon their duties, be sworn or affirmed before the Mayor, faithfully to perform the duties of the office to the best of their skill and the tenor of this ordinance.

Authority respecting quality and weight.

SEC. 2. With respect to the quality of any article weighed by the Weigh Masters, they shall not interfere, except that where any hay being weighed shall appear not to be sufficiently dried or cured, they shall deduct from the weight there-

of, what may appear to be just, giving the parties notice thereof.

Fees. July 7, 1870.

SEC. 3. For weighing hay and other articles on the said scales, the Weigh Masters shall demand and receive from the person having the same weighed, the following fees, that is to say:

Hay.

For each load of hay weighed $1\frac{1}{4}$ ton, or upwards.....37 cents
For each ton, and under $1\frac{1}{4}$ ton.....25 "
For each $\frac{1}{2}$ ton, and under 1 ton.....18 "
For each less $\frac{1}{2}$ ton.....12 "

Animals.

For each live animal weighing 500 lbs., or more.....25 "
For each live animal less than 500 lbs.....12 "
For each dead animal weighing 500 lbs., or more.....12 "
For each dead animal less than 500 lbs..... 6 "

Coal, etc.

For coal, castings or scrap iron, at the rate of, per ton.10 "
But no draught of either shall be weighed for less than 6 "
All other articles at the rate of, per ton.....15 "
But no draught for less than..... 6 "

Weighing of wagons, etc.

And the owner or driver of every wagon or other vehicle carrying hay or any other articles to be weighed at the public scales, and where it is not already done, shall cause such vehicle to be weighed at his own proper cost, and the weight thereof shall be legibly marked thereon by the Weigh Master or his deputy, and such weighing and marking shall be repeated whenever repairs or alterations in any such vehicle shall, in the opinion of the Weigh Master, require it, for which the following fees shall be paid as aforesaid, viz:

Fees.

For each empty wagon, cart, or other vehicle, the first time ....25 cents

For each empty wagon, cart, or other vehicle, after being repaired or altered, and varying more than 28 lbs. from the original weight.....12 cents

And for any less variation, no charge shall be made, nor for marking any vehicle whatever.

Owners of scales retain all fees.

Weigh Masters who own the scales used by them shall not be required to pay to the City Treasurer any portion of the fees received by them for weighing.

Unloading unweighed hay.

Penalty.

SEC. 4. For every load of hay unloaded without first giving the Weigh Master or his deputy notice, permission and reasonable time to weigh the same before it be unloaded, the purchaser or receiver shall forfeit the sum of fifty cents, to be recovered by the Weigh Master before the [Municipal Court] in the same manner that debts of equal amount are recoverable; *provided always*, that no forfeiture shall be recoverable for neglect of weighing hay when it shall so happen that the said public scales are not in a condition for weighing.

Passed at City Hall, March 26, 1857.

INSPECTOR OF OILS AND FLUIDS.

AN ORDINANCE prohibiting the selling, offering or keeping for sale of certain oils, inflammable at a less fire test than 100 degrees.

Explosive test required.

Nov. 8, 1877.

SECTION 1. It shall be a public nuisance for any person to mix, for sale, naptha or benzine and illuminating oils, or to sell or keep for sale, or offer for sale such mixture, or to sell or keep for sale, or offer for sale, within the City of Wilmington, oil made from petroleum, for illuminating [or other] purposes, which gives out an explosive vapor under a temperature of 100 degrees, or which is inflammable at a less temperature or fire test than 100 degrees Fahrenheit;[1] and any one, on conviction thereof before the [Municipal Court] of the City of Wilmington, shall be fined not less than fifty nor more than one hundred dollars for every such offense.

Appointment of Oil Inspector annually.

SEC. 2. There shall be appointed annually, on the first stated meeting in July, by the Council, an Inspector of Oils and Fluids,[2] at any time hereafter to be made,[3] kept or offered

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1. For election, term of office, and salary of Inspector of Oils and Fluids, see Act of May 3, 1893, supra, p. 157 this volume.
2. So printed in edition of 1872.
3. See Act of March 15, 1907, 24 D. L. 305.

for sale for illuminating purposes, and no such oil or fluid shall hereafter be made, sold, or kept or offered for sale within the City of Wilmington, which shall not previously have been inspected and approved by him as not inflammable at a less temperature or fire test than one hundred and ten degrees, Fahrenheit, under a penalty of not less than fifty nor more than one hundred dollars, to be imposed upon the person so offending.

Inspection of oils before sale.

Sec. 3. Upon the orifice or orifices of every barrel, box, cask, case, can, or other vessel containing such oil or fluid so inspected and approved, the Inspector shall, at the time of, and on each occasion of inspection and approval, affix a seal or mark in such manner that such barrel, box, case, can, or other vessel cannot, without violence or impairing such seal or mark be refilled without the knowledge of the Inspector, and no barrel, box, cask, case, can, or other vessel containing or to contain oil or fluid for sale within this city, for illuminating purposes, shall be opened or have any of its contents drawn or removed therefrom, except by the Inspector, for purposes of inspection, until it shall have been duly inspected, approved and stamped or marked by the Inspector.

Seal or mark of the Inspector.

Taking oil from barrel or other vessel before same is inspected, forbidden.

Sec. 4. For opening or drawing any of its contents from any vessel containing oil or fluid, intended to be sold, or kept or offered for sale, within this city, for illuminating purposes, before it shall have been inspected, approved and stamped or marked by the Inspector, and for refilling with oil or fluid, intended for sale, or to be kept, or offered for sale within this city for illuminating purposes, except with oil or fluid already inspected and approved as aforesaid, any vessel stamped or marked by the Inspector, as hereinbefore provided for, and from which any portion of its contents may have subsequently been withdrawn, every person guilty thereof, or of assisting therein, shall be fined not less than fifty nor more than one hundred dollars for every such offense.

Opening or drawing from, or refilling vessels containing oil.

Sec. 5. For his services in the premises, the Inspector shall be entitled to be paid, by the person owning or having in his possession the oil or fluid which shall be or has been in-

Compensation of Inspector.

spected, one-half cent per gallon, provided no fee shall be less than twenty cents.

Reporting of violations to the Mayor.

Monthly report to City Council.

SEC. 6. It shall be the duty of the Inspector to advise the Mayor of every infraction of this ordinance coming to his knowledge, or of which he shall have suspicion, and report in writing to the Council, at its first stated meeting in every month, the number of gallons of oil or fluid inspected by him, under this ordinance, during the last preceding month, the names of the persons for whom inspected, the quantity approved, and the quantity condemned in each case, and for each person, their respective places of business, and the place where the oil or fluid was inspected, when elsewhere than at such place of business, with such other information bearing upon the matter in hand as may be of public benefit.

Dec. 13, 1877.

Dealers must make returns to City Auditor.

SEC. 7. Wholesale dealers in petroleum, naphtha, benzine and illuminating [oils], shall hereafter, on the first day of each month, make a return to the City Auditor of all oils received and sold by them during the preceding month, and whether to persons residing within or beyond the limits of the City of Wilmington. It shall be the duty of all persons dealing in oils, either at wholesale or retail, when oils are received by them in the original package, and which have not been inspected as provided by this ordinance, to notify the Inspector when such oils are received, so that the original packages intended for sale or use within the City of Wilmington, may be immediately inspected. Oils intended for sale or use beyond the limits of the City of Wilmington need not be inspected.

Dealers must notify Inspector.

City Auditor's blanks.

Returns shall be sworn to.

Auditor shall compare return with report of Inspector.

Blank forms for making returns shall be furnished to wholesale dealers by the City Auditor upon application. The returns shall be sworn or affirmed to before the Mayor or other officer authorized by the laws of this State to administer oaths or affirmations. It shall be the duty of the City Auditor to compare each return with the monthly report of the Inspector, and report to the Inspector any discrepancies. Any person or persons, firm or corporation, selling oils by the original barrel, box, cask, case, can, or other vessel, shall, for the purpose of this ordinance, be considered a wholesale dealer in oils. Any person, firm or corporation, carrying on the business of a whole-

Who shall be considered wholesale dealers.

sale dealer in oils, within the meaning of this ordinance, who shall violate or refuse to comply with the provisions of this section, shall be fined not less than ten, nor more than fifty dollars for every such offense. Nothing in this ordinance shall be deemed to apply to oils solely animal.

Penalty for violation of ordinance.

Passed at City Hall, April 28, 1870.

INSPECTORS AND MEASURERS OF LUMBER.

AN ORDINANCE providing for the appointment and prescribing the duties of Inspectors and Measurers of Lumber.

SECTION 1. The City Council shall, annually, at the first stated meeting in the month of February choose one or more persons to act as Measurers and Inspectors of lumber, whose duty it shall be, upon application by one or more of the contracting parties in a purchase or sale of lumber, received in this city by rafts, vessels, cars or otherwise, to measure and inspect the quality and quantity of the lumber so brought under their notice, they shall be furnished with the order or contract, and such lumber as passes their inspection they shall mark as approved, and their approval shall be evidence that the order is filled according to contract. Said Inspectors and Measurers shall, before entering upon their duties, be sworn or affirmed before the Mayor, faithfully to perform the duties of the office to the best of their skill, and the tenor of this ordinance.

Appointment of Measurers and Inspectors.

Inspectors and Measurers to be sworn.

SEC. 2. The Inspectors and Measurers shall receive, as fees, twenty cents per thousand feet for measuring, and twenty-five cents per thousand feet for measuring and inspecting lumber as aforesaid, to be paid by the party applying for the inspection and measurement of the same; *provided*, that in no case shall they receive a less fee than twenty cents.

Inspectors' and Measurers' fees.

Proviso.

SEC. 3. That no person owning, employed in, or in any manner interested in a lumber yard, shall be a lumber Measurer and Inspector, as provided for by this ordinance.

Who shall not be chosen Inspectors or Measurers.

Passed at City Hall, January 27, 1876.

PLUMBING INSPECTOR.[1]

AN ORDINANCE to create a Plumbing Inspector for the City of Wilmington, and to provide rules and regulations relative to plumbing and draining.

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SEC. 2. * * * * * * * * * *

Monthly return of fees.

He shall make monthly returns to the City Auditor of all fees collected by him in pursuance of his duties; such returns shall be itemized and sworn to.

* * * * * * * * * *

Fee for inspecting.

SEC. 5. When the plan of any plumbing or drainage system, which includes water closets or soil pipes leading from water closets, is filed in the office of the Plumbing Inspector, a fee for the use of the city of fifty cents must be paid to defray the expenses of inspection of filing and superintending the testing of the work, as provided in Section 24.

Passed at City Hall, May 3, 1886.

GAS INSPECTOR.

AN ORDINANCE providing for a Gas Inspector for the City of Wilmington, and prescribing the salary and duties of said Gas Inspector.

BE IT ORDAINED by the Council of Wilmington:

Inspector of Plumbing to be Gas Inspector.

SECTION 1. That the Inspector of Plumbing for the City of Wilmington shall, after the passage of this ordinance, immediately assume the duties of Gas Inspector in and for the City of Wilmington and shall perform all the duties hereinafter provided for.

Salary.

SEC. 2. The salary of the Gas Inspector for the City of Wilmington shall be Five Hundred Dollars ($500.00) per an-

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1. The general provisions of this Ordinance are supplied by Resolution of the Street and Sewer Department adopted March 26, 1901.

num, payable monthly, in the same manner as other officers of the said city are paid.

SEC. 3. Before entering upon the duties of his office, (*a*) the said Gas Inspector shall give bond to the Mayor and Council of Wilmington, with good and satisfactory security, in the sum of One Thousand Dollars ($1,000.00), conditioned for the faithful performance of his duties as said Gas Inspector; said bond to be approved by the Council of Wilmington. Bond.

(*a*) As to the meaning of the above phrase, see the case of Pickering vs. Day, 2 Del. Ch. 333 at 334. (yr. 1866) (See Sec. 11 "a" of the Charter.)

SEC. 4. It shall be the duty of the Gas Inspector within twenty (20) working hours from the time he shall receive the notification provided for in Section five of this ordinance, to make all necessary inspections and tests. Duties.

SEC. 5. Upon the completion of any system of gas piping in any building that may be from and after the passage of this ordinance, erected, altered or extended, in the City of Wilmington, the fitter shall notify the Gas Inspector in writing that the work is ready for inspection and testing. No pipe or fitting shall be covered or concealed from view until the same has been examined and approved by the Gas Inspector or his assistant, the size of pipe used shall not be less, nor the length greater, to the number of burners stated than those specified in the following table, except that if the number of burners is not more than half of the stated maximum, the length runs may be increased one-half: Piping in building to be inspected before covering.

TABLE.

Size of Pipe.	Greatest Length Allowed.	Greatest Number of Burners.
$\frac{3}{8}$ inch	10 feet	2
$\frac{1}{2}$ inch	30 feet	6
$\frac{3}{4}$ inch	60 feet	20
1 inch	80 feet	35
$1\frac{1}{4}$ inch	120 feet	60
$1\frac{1}{2}$ inch	160 feet	100

Specifications.

2 inch	200 feet	200
2½ inch	300 feet	300
3 inch	450 feet	450
4 inch	600 feet	700

In applying the above table, the number of burners to outlets in the various locations shall be estimated as follows, except when otherwise specified and approved by the Gas Inspector:

Parlor, ceiling outlets	4 burners
Dining-room, ceiling outlets	4 "
Bedroom, ceiling outlets	3 "
Kitchen, ceiling outlets	1 "
Bracket and newel outlets	1 "
Office, ceiling outlets	2 "

Size of pipes.

Pipes smaller than ⅜-inch, shall not be used, except in stems of gas fixtures.

Piping in churches and halls.

Gas pipes in churches, halls and other large buildings, shall be in proportion to the number of lights as given by the table or as may be otherwise specified and approved by the Gas Inspector.

Materials and joining of pipes.

SEC. 6. The pipe used shall be the best wrought iron, with galvanized iron fittings, and joints shall be made with white or red lead, which shall be applied to the male threads only, gas fitter's or other cements will not be permitted except in hanging of gas fixtures; in making turns, fittings must be used, no bent pipes, in making connections when required, long screws, or right and left couplings must be used, no second hand pipe shall be used, except that when a building is undergoing reconstruction or repairs, such gas pipes and fittings as are taken out and found in good condition and of the proper size may be reused.

Pipes must be graded to meter.

All pipes shall be properly supported and stayed with pipe hooks or straps and screws. All pipes shall be properly graded, and if practicable towards the meter, a bracket outlet

shall be taken from the side or top of a main, and run as a riser, when possible to do so.

Defective fittings to be removed.

All split pipe and defective fittings shall be removed.

All main risers shall be run in an inside partition if possible, and at least two feet from outside walls.

Extensions and alterations to be inspected.

No extension or alteration of any existing system of gas piping in a building for illuminating purposes, in excess of twenty-five (25) feet in length shall be made without reporting the same to the Gas Inspector, for inspection and approval. Extensions shall conform in size to the table in Section five and shall be made from the largest practicable outlet.

Condemnation of work below regulations.

The Gas Inspector shall promptly condemn and order the removal, reconstruction or repair of any system of gas piping or portion thereof, which does not conform to these regulations.

Repairs ordered.

He shall order the necessary repairs to be made when defects are found in any old system of gas piping or fixtures connected therewith, and such repairs shall be promptly made by the responsible party upon service of due notice.

Pipes must be accessible and properly fastened.

SEC. 7. Pipes must be so run and covered as to be readily accessible, and must not be run at the bottom of floor beams or joists, which are to be lathed and plastered. They must be securely fastened to the top of the beams or joists, which should be cut out as little as possible. When pipes are run parallel to joists, they must be supported by strips nailed between the same, and these strips must not be more than five (5) feet apart. All cutting of floor beams or joists should be done as near as possible to the ends or supports of the same; pipes must not be laid beneath tiles or parquet floors, or under marble platforms, or under hearth stones, when it can be avoided. Floor boards over main lines must be fastened down with screws, so that the same can be readily removed. All main risers shall extend full size to the first outlet.

Definition of "piping."

The word "piping" herein used is intended to describe any system of piping which gets, or is intended to get, its supply of gas through one riser, or from one source.

Separate piping systems in building.

When two or more tenants occupy one building, and each has a separate system of piping, supplied by a separate riser, each system of piping is considered in these regulations by itself, as though it had been in a separate building.

New piping means only that piping that is put in by the fitter as a part of his present job.

Old piping means all piping that may be found on the premises when the fitter enters the same to undertake his present job. Old piping may or may not have had gas in it, or it may or may not have been previously inspected.

Outlets.

All ceiling outlets must project not more than two (2) inches, or less than five-eighths inches, from the finished surface, and must be firmly secured, and properly plumb. Side wall outlets must project not more than seven-eighths inches or less than five-eighths inches from the finished surface, and must be securely fastened. All piping must be free from obstructions.

Two mercury tests required.

SEC. 8. All systems of gas fitting in new buildings, hereafter to be erected, in this city, as well as in extensions, and alterations to old buildings, shall be tested, and the mercury test applied, first; when the pipes and fittings are all in place, and before the same are covered or concealed, and second; when the building is completed. These two tests to be made by the fitter, and upon the job being passed and approved by the Gas Inspector, or his assistant, he shall give to the fitter a certificate as follows:

Certificate.

"This is to certify that the gas pipes and fittings in the building, No. street, has been duly inspected and

tested, and found to be tight, and in conformity with the city regulations.

By

Inspector.

Wilmington, Delaware, , 191 ."

A third and final test shall be made of a system of piping and fixtures, after the fixtures have all been hung, said test to be applied by the party hanging the fixtures, and as in the first and second tests, shall be the mercury test, and upon the same being passed and approved by the Gas Inspector or his assistant, he shall issue the following certificate to the party applying for the inspection and test: Final test.

"This is to certify that the piping and fixtures in the building No. street, has been duly inspected and tested, and found to be gas-tight and to conform to the city regulations. Certificate.

Inspector.

By

Wilmington, Delaware, , 191 ."

And in no case shall the Gas Company turn the gas on the meter until such certificate has been issued.

SEC. 9. It shall be the duty of the Gas Inspector to make a daily inspection and test (Sunday excepted) as to the candle power of the gas furnished to the consumers in the City of Wilmington at such time and place as he may select, and he shall make monthly reports of the results of said daily tests to the Council. Inspection and test as to candle power of gas.

SEC. 10. Any consumer of gas may have his meter tested at any time under the supervision of the Gas Inspector. The consumer of gas shall deposit with the Gas Inspector a fee of twenty-five cents at the time of making his application for the meter test. If the meter proves correct in accordance with the United States standard, the fee of twenty-five cents shall be used to defray the cost of said meter inspection. If the meter should not conform with the above standard, the said fee of Consumer may have gas meter tested.

twenty-five cents shall be returned to the consumer who has deposited the same, and all expenses attached to the said test shall be borne by the Gas Company furnishing gas for said meter.

Fees.

SEC. 11. All fees so collected shall be paid monthly into the City Treasury.

Penalties.

SEC. 12. Any person or persons, firm or corporation offending against or violating any of the provisions of this ordinance shall, upon conviction thereof in the Municipal Court, pay a penalty of not more than ten dollars ($10) for the first offence and for the second and each subsequent offence, a penalty of not less than ten dollars ($10), nor more than one hundred ($100.00) dollars. All work improperly executed and not in accordance with the provisions of this ordinance shall, upon written order of the Gas Inspector properly served, be removed by the person, or persons, firm or corporation improperly executing the same, or by the person or persons, firm or corporation for whom such improper work was executed, within forty-eight hours from the time said written order shall have been served, and for any failure to remove such work after the service of such written notice, such person, or persons, firm or corporation shall forfeit and pay a fine of twenty-five ($25) dollars for each and every twenty-four (24) hours that such work so improperly executed shall be suffered to remain.

Improper work to be removed under penalty.

Approved May 21, 1903.

REGULATOR OF CITY CLOCK.

AN ORDINANCE to appoint a Regulator of the city clock, and to define his duties.

SECTION 1. There shall be an officer who shall be designated the Regulator of the city clock.

Duties of Regulator.

SEC. 2. His duties shall be to supervise, wind up, regulate and keep in good condition, and so as at all times to indicate the correct time, the city clock. And for that purpose he

shall, at all times, have access to the City Hall, and have sole control of the appurtenances and immediate surroundings and connections of said clock.

SEC. 3. For his services he shall receive the sum of seventy-five dollars per year. Salary.

SEC. 4. It shall be his duty to illuminate and keep it lighted up at night. Illumination of clock.

Passed at City Hall, June 4, 1868.

AN ORDINANCE in relation to Assessors' and Collectors' Clerks for the City of Wilmington.[1]

BE IT ORDAINED by the Council of Wilmington:

SECTION 1. That the assessor and collector of the Northern District and the assessor and collector of the Southern District shall each have authority to appoint a chief clerk and a clerk for his district. Assessors to appoint chief clerk and clerk.

SEC. 2. That each of the two assessors and collectors shall have power to discharge his chief clerk or his clerk at any time and his acts in this regard shall not be questioned. Power of removal.

SEC. 3. The salary of each of the chief clerks shall be Twelve Hundred Dollars per year and the salary of each of the clerks shall be One Thousand Dollars per year payable monthly in the same manner as other city officers are paid.[2] Salaries.

SEC. 4. All ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed.

Passed by Council, July 22, 1909.

Returned to The Council unapproved by Mayor with his reasons August 5, 1909.

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1. See Sec. 3, page 30, and also Sec. 77, page 81 of the City Charter.
2. For authority by ordinance to change salaries fixed by Act of General Assembly, see Act of March 25, 1907, 24 D. L. 351, Sec. 31 at p. 60.

Passed by two-thirds vote (a) of The Council August 5, 1909.

(a) A better practice would be to state the *number* of votes cast.

JANITOR OF MUNICIPAL COURT ROOM.

AN ORDINANCE for the better regulation of the Municipal Court room and the Police Station.

Janitor of the Municipal Court.

SECTION 1. That immediately after the passage of this ordinance, the Mayor[1] shall appoint a person, whose duty it shall be to be in attendance at the Police Station. He shall be the janitor of the Municipal Court room and the Police Station, and shall keep them clean and in good order. It shall also be his duty to attend to all fires connected therewith. His pay shall be at the rate of forty dollars ($40) per month,[2] and payment shall be made to him in the manner and at the same time as City Constables.

Duties.

Salary.

Passed at City Hall, July 1, 1886.

SUPERINTENDENT OF THE FIRE ALARM TELEGRAPH.

AN ORDINANCE to provide for a Superintendent of Fire Alarm Telegraph and to fix his salary.

Appointment of Superintendent.

SECTION 1.[3] There shall be appointed by the Council of Wilmington at its second stated meeting in August, 1886, and at the same time in each and every third year thereafter, an officer of this city to be styled the Superintendent of Fire Alarm Telegraph, who shall hold office for three years, unless sooner removed by the Council. He shall have entire charge and control, under the direction of the Fire Committee of the Fire Alarm Telegraph in this city, and shall cause the same to be kept in good working order in all its parts. He may at his

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1. This power is now vested in the Board of Police Commissioners. See Act of April 18, 1893, Sec. 4, page 207 this volume.

2. The salary was fixed at $50 per month by the Board of Police Commissioners on May 13, 1893.

3. The Board of Police Commissioners now have entire jurisdiction and control over the Fire Alarm and Police Telegraph System and all offices connected therewith. See page 209 this volume, Sec. 5.

own expense appoint a batteryman and lineman to assist him in keeping in good working order and repair the batteries, poles, lines and general equipment of the Fire Alarm Telegraph, and he shall be responsible for such batteryman and lineman. The salary of the said Superintendent shall be at the rate of one thousand dollars ($1000) per annum, payable monthly as other city officials are paid.[1] Lineman. Salary.

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Passed at City Hall, August 5, 1886.

REGISTRY CLERK IN THE DEPARTMENT OF ENGINEERING AND SURVEYING.

AN ORDINANCE for the appointment of a clerk for the registration of real estate within the City, in the Department of Engineering and Surveying.

SECTION 1. That immediately after the passage of this ordinance there shall be appointed by Council a suitable person, who shall be a competent draughtsman, whose duties it shall be, under the direction of the Chief Engineer and Surveyor, to attend to the registration of real estate within this city, and shall perform draughting and such other work as shall be required of him by the Chief Engineer. Clerk of Registry Bureau. Qualification. Duties.

SEC. 2. The term of office of such clerk shall continue to and expire on the day of the first stated meeting of the Council in the month of February, 1892, on which day in that year, and every third year thereafter, a successor to said clerk shall be selected by the Council. Term.

SEC. 3. [That the salary of the Registry Clerk of the Department of Engineering and Surveying shall be Nine Hundred Dollars per annum, payable monthly.] Salary.

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1. The Board of Police Commissioners by resolution of July 11, 1904, fixed the salary of the Superintendent at $900 per annum and the lineman at $840 per annum.

SEC. 4. That all ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Passed at City Hall, March 14, 1889.

SALARIES OF ASSISTANT ENGINEER, REGISTRY CLERK AND RODMEN.

AN ORDINANCE defining the salaries of the Assistant Engineer, Registry Clerk and Rodmen of the Department of Engineering and Surveying of the City of Wilmington.

BE IT ORDAINED by "The Council" of Wilmington:

Salary of First Asst. Engineer.

SECTION 1.[1] That the salary of the First Assistant Engineer of the Department of Engineering and Surveying shall be Twelve Hundred and Forty Dollars per annum, payable monthly.

Salary of Second Asst. Engineer.

SEC. 2. That the salary of the Second Assistant Engineer of the Department of Engineering and Surveying shall be Eleven Hundred and Forty Dollars per annum, payable monthly.

Salary of Registry Clerk.

SEC. 3. That the salary of the Registry Clerk of the Department of Engineering and Surveying shall be Nine Hundred Dollars per annum, payable monthly.

Salaries of Rodmen.

SEC. 4. That the salary of each of the Rodmen of the Department of Engineering and Surveying shall be Seven Hundred and Twenty Dollars per annum, payable monthly.

Ordinance to be effective.

SEC. 5. That this ordinance shall not take effect until the expiration of the terms of the present incumbents.

SEC. 6. That all ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed.

Approved January 27, 1904.

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1. The above salaries were changed by ordinance passed February 10, 1910. See page 617 of this volume, (note).

QUALIFICATION OF ASSISTANT CITY SOLICITOR.

AN ORDINANCE to provide for the election of an Assistant City Solicitor for the City of Wilmington, as authorized by Chapter 575, Volume XX, Laws of Delaware.

BE IT ORDAINED by the Council of Wilmington:

SECTION 1.[1] * * * * * * * * Supplied by Act of March 25, 1907, 24 D. L. 349.

SEC. 2. * * * * * * * * * Supplied by Act of March 25, 1907, 24 D. L. 349.

SEC. 3. That a person in order to be eligible for election as provided in Section 1 of this ordinance, shall be an attorney-at-law, admitted to practice in the Superior Court of the State of Delaware, and shall have been a resident of the City of Wilmington for at least one year next preceding such election. Proviso as to eligibility.

SEC. 4. All ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed.

Passed at the City Hall, June 20, 1901.

AN ORDINANCE providing a salary for the Assistant City Solicitor.

BE IT ORDAINED by The Council of Wilmington (two-thirds of all members elected to The Council concurring herein):

SECTION 1. That from and after the passage of this ordinance the Assistant City Solicitor shall receive a salary of One Thousand Dollars per annum; the same to be payable at the same time, and in the same manner as the salaries of other city officials are now payable. Salary.

Approved August 2, 1907.

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1. See Charter, Sec. 40.

AN ORDINANCE providing for a salary for the Deputy City Judge for the Municipal Court of Wilmington.

BE IT ORDAINED by The Council of Wilmington:

Salary per annum.

SECTION 1. That the salary of the Deputy City Judge of the Municipal Court for the City of Wilmington shall be Seven Hundred and Twenty Dollars ($720) per annum, payable monthly in the same manner as other officers of said city are paid.

SEC. 2. That all ordinances or parts of ordinances inconsistent herewith are hereby expressly repealed.

Approved June 28, 1907.

AN ORDINANCE fixing the salaries of the Executive Officers of the Board of Health in the City of Wilmington.

BE IT ORDAINED by the Council of Wilmington:

SECTION 1. On and after the second day of May, A. D. 1907, the executive officers of the Board of Health of the City of Wilmington shall each receive an annual salary of Nine Hundred Dollars ($900), payable in equal monthly installments.

Salary per annum.

SEC. 2. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

Approved April 15, 1907.

AN ORDINANCE providing for the appointment of a Secretary to the Mayor and the Executive Board of the City of Wilmington.

BE IT ORDAINED by The Council of Wilmington:

Secretary to Mayor and Executive Board.

SECTION 1. That a Secretary for the Mayor and the Executive Board of the City of Wilmington shall be appointed by the Mayor on or before the first day of May, A. D. 1907, who shall hold office as such Secretary at the pleasure of the Mayor.

Qualifications of Secretary.

SEC. 2. No person shall hold the office of Secretary to the Mayor and Executive Board of the City of Wilmington who shall not be a competent stenographer and typewriter.

Duties.

SEC. 3. It shall be the duty of such Secretary to perform such services as shall be required of him by the Mayor or by the Executive Board in the performance of their official duties; and said Secretary, while not so employed, shall assist the Clerk of Council in the performance of the duties of such Clerk.

Salary.

SEC. 4. The salary of said Secretary shall be One Thousand Dollars per year payable monthly in the same manner as other city officers are paid.

Approved April 18, 1907.

AN ORDINANCE to provide for the election of two Rodmen for the Department of Engineering and Surveying for the City of Wilmington.

BE IT ORDAINED by the Council of Wilmington:

Election of Rodmen.

SECTION 1. That the Council at the first stated meeting in the month of February, A. D. 1901, and at the first stated meeting in the month of February in each and every third year thereafter, shall elect two suitable persons to be known as Rodmen for the Department of Engineering and Surveying for the City of Wilmington, the persons so elected shall be subject to the orders of the City Engineer.

Subject to orders.

Salaries. When and how paid.

SEC. 2. [That the salary of each of the Rodmen of the Department of Engineering and Surveying shall be Seven Hundred and Twenty Dollars per annum payable monthly.[1]]

SEC. 3. All ordinances or parts of ordinances inconsistent with this ordinance be and the same are hereby repealed.

Passed at the City Hall, January 17, 1901.

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1. See Ordinance on page 602 of this volume.

AN ORDINANCE providing a salary for the Clerk of the Municipal Court.

BE IT ORDAINED by the Council of Wilmington (two-thirds of all members elected to the Council concurring herein):

Salary per annum.

SECTION 1. That from and after the passage of this ordinance, the Clerk of the Municipal Court shall receive a salary of Twelve Hundred Dollars ($1200.00) per annum, the same to be payable at the same time and in the same manner as the salaries of the other city officials are now payable.

SEC. 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Approved July 25, 1908.

AN ORDINANCE providing a salary for the Clerk of Council.

BE IT ORDAINED by the Council of Wilmington (two-thirds of all the members elected to the Council concurring herein):

Salary per annum.

SECTION 1. That from and after the passage of this ordinance the Clerk of Council shall receive a salary of Fifteen Hundred Dollars per annum; the same to be payable at the same time, and in the same manner, as the salaries of the other city officials are now payable, to take effect July 1, 1908.

SEC. 2. That all ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed.

Approved July 25, 1908.

AN ORDINANCE empowering the City Solicitor to employ a Stenographer and Typewriter.

BE IT ORDAINED by The Council of Wilmington:

Authority to employ stenographer.

SECTION 1. That the City Solicitor be, and he hereby is, authorized to employ a stenographer and typewriter; said

stenographer and typewriter to hold office for and during the term of the City Solicitor by whom appointed.

SEC. 2. That said stenographer and typewriter shall receive the salary of five hundred dollars per annum; the same to be payable at the same time, and in the same manner as the salary of other city officials are now payable, to take effect July 1, 1908. Salary.

Approved July 25, 1908.

MEMBERS OF COUNCIL.

AN ORDINANCE concerning Members of Council and certain city officers.

SECTION 1. No person, whilst a member of the Council, shall be considered a suitable and proper security for any city officer whatever. Councilmen disqualified for sureties.

SEC. 2. Every committee of the Council submitting a report, recommending any action, which will require an expenditure of the public money, shall embody in such report an estimate of the probable cost thereof. Estimate of expense in reports.

* * * * * * * * * * Nov. 27, 1869.

Passed at City Hall, April 3, 1862.

AN ODINANCE relative to unexpired terms of office.

SECTION 1. In case of a vacancy by death or otherwise in any office, the appointment to which is made by the Council, the said Council may, as soon thereafter as it shall deem expedient, elect a person to fill said office for the residue yet unexpired of said term. And the person so elected and qualified shall have all the powers, rights and authority and be subject to all burdens, liabilities and duties appertaining to said office. Vacancies in city offices.

Passed at City Hall, November 9, 1865.

SALARIES OF CERTAIN OFFICERS.

AN ORDINANCE defining the salaries of the officers of city.[1]

SECTION 1. That the salaries and compensation of the officers of the city hereinafter named, shall be as follows, payable monthly, viz:

Act of March 25, 1907.	Mayor, per year	[$2,000.00]
	Judge of the Municipal Court, per year	1,500.00
	President of Council, per year	300.00
Ordinance, July 25, 1908.	Clerk of Council, per year	[1,500.00]
	City Treasurer, per year	1,200.00
Ordinance, July 25, 1908.	City Auditor, per year	[1,500.00]
	Chief Engineer of the City, per year	2,000.00
Ordinance, July 25, 1908.	Clerk of Municipal Court, per year	[1,200.00]
Ordinance, April 15, 1907.	Executive Officers of the Board of Health, each per year	[900.00]
	Registrar of Deaths, Births and Marriages, per year	800.00
Act of April 12, 1887.	Members of Board of Assessment, Revision and Appeals, each, per year	[150.00]
	Members of Council, each, for each meeting of Council	1.00
	Members of Council, for each committee meeting attended	.50
	Chairman of Finance Committee, per annum	50.00
	Chairman of Public Buildings Committee, per annum	25.00
Act of May 3, 1893.	Bailiff of Council, per annum	[720.00]
Ordinance, July 25, 1908.	City Auditor's Clerk, per annum	[1,200.00]
Ordinance, Aug. 5, 1909.	City Treasurer's Clerk, per annum	[1,200.00]
Resolution, July 30, 1907.	Street Commissioner, per annum	2,000.00
Ordinance, Aug. 10, 1908.	Secretary of Board of Health, per annum	[500.00]
	Vaccine Physicians, per annum	100.00
	Members of Board of Health, each, per annum	100.00
Ordinance, Jan. 27, 1904.	First Assistant Engineer Surveying Department, per annum	[1,240.00]

1. This ordinance is published as altered and amended by Acts of General Assembly and ordinances passed subsequently.

Second Assistant Engineer Surveying Department, per annum	[1,140.00]	Ordinance, Jan. 27, 1904.
Regulator of Clock, per annum	75.00	
Harbor Master, per annum	100.00	Ordinance, Aug. 23, 1883.
Clerk of the Market, per annum	500.00	Act of May 3, 1893.
Wharf Commissioners, per day, whilst employed, each	1.00	
Building Inspector, per annum	[1,500.00]	April 22, 1893.

Original ordinance.

Passed at City Hall, June 30, 1864.

CHAPTER II

STANDING COMMITTEES OF COUNCIL.

		Page			Page
1.	Finance	610	5.	Bonds	612
2.	Fire Companies	610	6.	Printing	613
3.	Police	611	7.	Law	614
4.	Public Buildings	611	8.	Pay Roll System	615

FINANCE COMMITTEE.

* * * * * * * * * *

SEC. 4. That the City Council shall, at its first stated meeting after the city election in every year, appoint a Finance Committee, composed of three members, which, in addition to its other duties, shall perform the duties hereinafter provided.[1]

* * * * * * * * * *

COMMITTEE ON FIRE COMPANIES.

* * * * * * * * * *

Committee on fire companies.

SEC. 6. The Council shall appoint, annually, (*a*) a committee of three members whose duty it shall be to visit the houses of the several fire companies previous to the payment of any portion of their annual appropriations; (*b*) and only such companies shall share such appropriations as shall be

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1. This paragraph, part of an Act of the General Assembly, passed February 20, 1857, (11 Del. Laws, Chap. 376, Sec. 4, page 407) is the only direct legislation authorizing the appointment of a Finance Committee, and appears not to have been repealed. It is published here for the sake of uniformity and convenience.

found, on examination by said Committee, to have twenty-five active members above the age of twenty-one years, and whose apparatus shall be in a good and sufficient condition.

* * * * * * * * * *

Passed at City Hall, October 13, 1856.

POLICE COMMITTEE.

AN ORDINANCE to re-appoint a Committee on Public Lamps and Police.

SECTION 1. There shall be appointed a Committee on Public Lamps[1] and a Police Committee, to hold office until the first regular meeting of the City Council after the next election.

Passed at City Hall, March 30, 1871.

COMMITTEE ON PUBLIC BUILDINGS.

AN ORDINANCE for the appointment of a committee which shall have the charge of public buildings.

SECTION 1. [That there be appointed a committee of Council to be called the Committee on Public Buildings, who shall have the charge and supervision of all the public buildings and grounds belonging to the city, except such as may be in charge of other committees than the Committee on Public Buildings, by requirement of law, or ordinance, or resolution. It shall consist of five members, and be appointed by the Council at the first stated meeting after the passage of this ordinance, and annually thereafter, at the first stated meeting after the city election.]

Aug. 20, 1872.
Appointment of committee.
Duties.
Consist of five members.

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1. Public lamps are now in charge of the Board of Directors of the Street and Sewer Department.

Aug. 20, 1872.

SEC. 2. [That all ordinances, and parts of ordinances, inconsistent with this, be and the same are hereby repealed.]

Passed at City Hall, March 16, 1871.

COMMITTEE ON BONDS.

AN ORDINANCE providing for the appointment of a Committee on Bonds and other purposes.

Appointment of committee.

SECTION 1. That there shall be appointed at the first stated meeting of the Council after the city election in every year, or whenever a vacancy may exist, a committee of five members of Council to be entitled Committee on Bonds.[2]

Duties of committee.

SEC. 2. That it shall be the duty of the Committee on Bonds to take cognizance of the official bonds and oaths or affirmations of all municipal officers, and report thereon in writing at the first stated meeting of the Council after the election, appointment or entrance upon duty of each and every city officer, whether said officer has duly taken the official oath or affirmation and given official bond according to law; (*a*) *provided*, that it shall not be requisite for said committee to report upon the official oath or affirmation of any officer when the same has been duly administered in the presence of the Council or upon the official bond or oath or affirmation of any member or officer of the Boards of Health or Public Education.

(*a*) The date of the above ordinance is 1856. The committee is now named for two years—the Councilmen being elected for that time.

(*b*) The fire companies, now, enter into contracts with the city. See note, p. 553 of this volume.

(*a*) The duty in the above section is to see that the official bond has been given "*according to law.*" In most instances the bond is required to be given "*before* the time fixed for entering upon the duties of his office," (see Sec. 11 "a" of the Charter); but there are exceptions to this rule. The Street and Sewer Directors bond "*immediately after organization,*" and the language in reference to the Engineer and Registrar of the Water Department is: "*They shall give security,*" no time being fixed.

The Mayor, the City Solicitor, the Water Commissioners, the Park Commissioners, the Harbor Commissioners and the members of the Board of Health are not required to bond.

Care should be taken that a bond be executed "according to law,"

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2. The expense of Surety Company bonds given by certain municipal officers are paid by the municipality. See 25 D. L. Sec. 3, p. 532 this volume.

and that no material change be made in it thereafter, or it may release the surety.

If after a bond, with surety, be given, a seal, or scroll be added to the signature of the principal, by the principal without the knowledge of the surety, it will be void.

State of Delaware vs. Smith, 9 Houst. 143. (yr. 1890)

Duty of Clerk of Council.

SEC. 3. That it shall be the duty of the Clerk of Council to furnish the Committee on Bonds with the name and office of every city officer contemplated by Section 2 of this ordinance immediately after his election or appointment.

Provide book of printed copies of oath, etc.

Sept. 6, 1875.

SEC. 4. That the Committee on Bonds shall provide [a book or books of printed copies of the official] oath or affirmation, which is required by law of city officers, and every officer of the city (excepting those sworn in at a meeting of the Council and members or officers of the Board of Health or of Public Education,) shall take and subscribe the oath or affirmation aforesaid before some officer having authority by law to administer an oath, and the same shall be thereupon kept in the office of the Clerk of Council [in said book or books for that purpose to be provided.]

Sept. 6, 1875.

Passed at City Hall, May 22, 1873.

PRINTING COMMITTEE.

AN ORDINANCE defining the duties of the Printing Committee.

Election of committee.

SECTION 1. There shall be elected annually a committee consisting of three members of Council, to be entitled "The Printing Committee."

Duties of committee.

SEC. 2. That it shall be the duty of the Printing Committee to superintend and direct all printing that may be necessary in the different departments of the city government. Whenever any officer, committee or department of the city shall require printed books, blanks, forms or other printed matter they shall be furnished as directed by said Printing Committee.

Proposals for city work.

SEC. 3. Said committee shall direct and control the necessary advertisements for sealed proposals for any public work

or contract of any kind whatsoever; (a) and it shall be left to the discretion of the members of said committee to say when, where and in what manner such advertisements shall be made.

(a) As to powers, in general, when advertising for sealed proposals, see the case of
Keogh vs. Mayor and Council Wilmington, 4 Del. Ch. 491. (yr. 1872)

Printing of ordinance.

SEC. 4. Immediately after the passage of any ordinance by the Council, the Chairman of the Printing Committee shall be notified of the fact by the Clerk of the Council, and it then shall be the duty of the Printing Committee to decide whether or not said ordinances shall be published in any of the newspapers of this city; and if it be decided that the ordinance is of such a character as to demand publication, the Printing Committee shall direct in what newspaper or newspapers it shall be published and for what length of time; *provided*, that the printing of all ordinances making appropriations for the year and additional appropriations shall be under the control of the Clerk of Council as directed by Section 49 [now Section 69 of Charter] of the City Charter as amended. *And provided further*, that the statement of the fiscal concerns of the city as directed by Section [64] of the City Charter as mended; *and provided further*, that all ordinances establishing the salaries, fees or emoluments of any elective office shall be published in the newspapers of the city, with the ayes and noes thereon, at least two weeks before the next ensuing election

See Sec. 64, new Charter.

See Sec. 47, new Charter. * * * * * * * * * * * * *

SEC. 5. That all ordinances and parts of ordinances inconsistent herewith are hereby repealed.

Passed at City Hall, January 18, 1883.

LAW COMMITTEE.

AN ORDINANCE defining the duties of the Law Committee.

Additional duties.

SECTION 1. The Law Committee, in addition to its other duties required by law, shall perform the duties heretofore assumed by the Legislative Committee.

SEC. 2. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

Passed at City Hall, September 1, 1887.

PAY-ROLL SYSTEM.

AN ORDINANCE creating a pay-roll system for the government of various departments of the City of Wilmington.

The departments to which the pay-roll system applies.

SECTION 1. That the Department of Street Commissioner, of the Engineering and Surveying, and of Police, and each and all other departments of the City of Wilmington, not herein named, in which wages and salaries have to be paid, shall be governed by the following pay-roll system.

Duty of heads of departments. See Act of April 20, 1887, 18 D. L. 352. Pay-rolls to be approved before being passed.

SEC. 2.[1] That the head of the * * * * * * * * * street department shall make out, or cause to be made out, on Tuesday of each week, a pay-roll containing the name of each person employed by the day or week, their occupations, and the amounts due to such persons, and submit the same to the committee having charge of the said * * * * * * * * street department. And if the said committee shall endorse the said pay-roll as correct, the same shall be sent to the Clerk of the Council, who shall cause the aforesaid pay-roll to be read, [unless the reading therof shall be dispensed with by the unanimous consent of council] and if Council so direct, he shall draw an order for the several amounts due in favor of [the head of the department sending in the pay-roll, for the amount, in gross, of said pay-roll. The said head of department, upon the following day, shall, between the hours of four and eight o'clock P. M., pay to the persons named in said pay-roll, the respective amounts set opposite their names, and take their receipts upon a pay-roll book, upon which he shall copy the said pay-roll, which pay-roll book shall be filed in his office. *Provided, however,* that when the Council shall issue warrants payable at a future time, said warrants shall be drawn in fa-

Exceptions.

March 11, 1875.

Jan. 22, 1874.

Time for the payment of employees.

Warrants.

1. The reference made in this section to the street committee of The Council, and to The Council, is no longer applicable. The Street and Sewer Department has full charge of the matter.

vor of each person named in the pay-roll, and said warrants shall be delivered to them by the head of the department, in lieu of money as before provided.]

Clerk of Council.

City officers' pay-roll to be submitted to Finance Committee for approval. Aug. 31, 1874.

SEC. 3. The Clerk of the Council shall, on the last Thursday of each month, make out or cause to be made out, a pay-roll containing the names of all the salaried officers of the city government, Members of the Council and Board of Health, [and the names of all the employees of Department of Engineering and Surveying] who shall be paid [monthly,] their position and the amount due each one named on said pay-roll, and submit the same to the Finance Committee, and if said committee indorse the said pay-roll as correct, the Clerk shall cause the same to be read at the next regular meeting of the Council. And if Council so direct, he shall draw orders in favor of the parties so named on said pay-roll, [the said orders to be called for at the City Treasurer's office, on and after the Tuesday next following.]

Orders, when payable.

Placing the name of any person on pay-roll not properly employed shall constitute a misdemeanor, and the person so offending shall be suspended, etc.

SEC. 4. That any pay-roll, made out, or caused to be made out, by the head of any department, or by the Clerk of Council, containing the name or names of any person, or persons, not properly employed, as provided for by the ordinances of this city, the person so offending shall be guilty of a misdemeanor, and shall at once be suspended from performing the duties pertaining to the said position, and upon the election of a successor his connection thereto shall cease.

Pay-rolls, when acted upon by Council, shall be sent to the City Treasurer. Duty of Treasurer on receipt of pay-roll.

SEC. 5. That the pay-rolls, after having been acted upon by Council, shall be sent to the City Treasurer, who shall copy the same in the pay-roll book, and the said Treasurer, or in his absence, then his legal representatives, shall take a receipt on the said pay-roll book for every amount so paid. * * *

When Treasurer's accounts shall be audited.

SEC. 10. So much of the Treasurer's accounts as shall be affected by this ordinance, shall be audited, on or before the tenth day of each and every month, and a report of the same made to Council at the first stated meeting thereafter.

Passed at City Hall, March 23, 1871.

CHAPTER III

DEPARTMENT OF ENGINEERING AND SURVEYING.

AN ORDINANCE to create the Department of Engineering and Surveying for the City of Wilmington.

SECTION 1. The Department of Engineering and Surveying, hereby established, shall be under the control of the Committee on Opening Streets, (*a*) who shall exercise a general supervision over the Engineering and Surveying Department, and to whose direction the Chief Engineer and officers shall conform. [That the officers of the Department of Engineering and Surveying shall consist of one Chief Engineer, and two or more Assistant Engineers as Council shall think necessary, and designated as First, Second, and Third Assistant Engineers.[1] That the Chief Engineer and Assistant Engineers shall be known collectively by the title of Engineers of the City of Wilmington.]

Feb. 1, 1883. Officers of Department.

(*a*) When "The Council" had control of the streets it had such a committee. The Street and Sewer Department was created in 1887, and since that time "The Council" has had nothing to do with the streets. It has no such committee now.

The Council appoints and pays the officers named in the above section, but they devote all their time and labor to the Street and Sewer Department, and must attend their meetings when required so to do, and advise, &c., the Department.

See Sec. 5 of the Street and Sewer Act, p. 230 of of this volume.

Section 6 of the above Act gives the Department power and authority to name and appoint all the officers it desires—its own surveyors and engineers, for instance, though in that case it would have to pay them itself. These officials should be under the absolute and exclusive control of the Street and Sewer Department.

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1. An ordinance passed February 10, 1910, has changed the above section.

The revision of the Charter, Laws and Ordinances is brought up to January 1, 1910, so that the above mentioned ordinance does not appear herein.

Election of Chief Engineer and Assistants.

SEC. 2. The Council shall, at the first stated meeting in February, 1871, elect a Chief Engineer and Surveyor for the term of three years * * * and at the same meeting shall elect two or more Assistants (one of whom shall be a good draftsman, and one capable of keeping accounts) for the term of three years. [That the salary of the Chief Engineer shall be two thousand dollars per annum, payable monthly. That the salary of the First Assistant Engineer shall be one thousand dollars per year, payable monthly, and the salary of the Second Assistant Engineer shall be nine hundred dollars per annum, payable monthly] but, nevertheless, upon proof of incompetence or neglect of their duties, either in field or office, the Council shall have power to remove any or all of those elected to fill the offices created by this ordinance.

Term of office.

Feb. 8, 1883.

Salaries.

The Chief Engineer shall be sworn and give bond.

SEC. 3. The head of this department is the Chief Engineer and Surveyor, and he, before entering upon his duties, shall make oath or affirmation before a Judge of the Superior Court or the Mayor, faithfully to discharge the duties connected with his office, as the same then are, or may hereafter be lawfully defined, and in addition he shall, before entering upon said office, execute a bond with two sureties to be approved by the Mayor and President of Council in the sum of two thousand dollars, conditional for the payment of any damages which may be sustained or incurred for or in consequence of any mistake or error made by him in giving the line or lines, or grade or grades of any lot or lots which he may survey by virtue of his office, which bond shall be for the bentfit of any person or persons so aggrieved; (*a*) *provided,* that the same shall not be recoverable unless prosecuted during his term of office, or within one year after the expiration thereof.

Bond to be approved.

(*a*) This decision, or the giving of lines, does not bind the property owner, for he is not to be the judge of titles of real estate. That matter belongs to the courts.
Nivin vs. Stevens, 5 Har. 272 at 275. (yr. 1850)

Assistant Surveyors shall be sworn and give bond.

SEC. 4. Each Assistant Surveyor shall be subject to the orders of the Chief Engineer or Surveyor, and, before entering upon the duties of his office, shall make oath or affirmation before one of the Judges of the Superior Court, or the Mayor, that he will faithfully discharge the duties of his office as the

same then are, or may thereafter be lawfully defined, and each said Assistant Surveyor or Regulator shall, before entering upon said office, execute a bond with two sureties, to be approved by the Mayor and President of the Council, in the sum of two thousand dollars, under the same conditions as provided for in section third. Bonds to be approved.

SEC. 5. The Chief Engineer and Surveyor shall have the superintendence and direction of all surveys and regulations as authorized by Acts of Legislature and ordinances of the City of Wilmington, now in force or hereafter to be enacted by Legislature or the City of Wilmington; he shall sign all plans and profiles or surveys, regulations, bridges and culverts when called for; he shall furnish the Committees of Opening Streets and Streets, with all plans and specifications for laying out, grading and regulating streets and public ways, and for bridges, culverts, location of inlets or other improvements to be done under the superintendence of said committees; he shall have charge of all instruments, maps, plans, drawings, records and books relating to the surveys, regulations, grades, culverts, sewers, bridges, wharves, and rivers of the city and all such shall be the property of the City of Wilmington; he shall, when required, attend meetings, and consult and advise (*a*) with the Council, and its committees, and other departments of the City Government. Duties of Chief Engineer.

(*a*) The city should consult with, and follow the advice of its engineer in doing work, for, by so doing it may avoid liability that would otherwise come to it.

Comegys, C. J: "But I wish the jury to understand that what has been said with respect to immunity of the city from responsibility for error of judgment is meant to be confined to cases where competent persons—for example, a *city engineer*—have been previously consulted, and have given an opinion which has been followed. But where the city authorities have not followed the advice of such engineer, or have not applied for it at all, but have acted upon their own judgment, as they have the right to do, they—that is, the corporation, * * must take the consequences of their mistake or error of judgment, if such there shall be found to have been."

Harrigan vs. Wilmington, 8 Houst. 140 at 143-144. (yr. 1888)
See Huey vs. Richardson, 2 Har. 206 at 213. (yr. 1837)

The Street and Sewer Department, now, has charge of the above matters and things. The language in Sec. 5 of the Street and Sewer Act (p. 230 of this volume) is similar to the last three lines of the above section. It is as follows:

"He shall when required by said directors, attend their meetings, and consult and advise with them, or either of them."

City map.

SEC. 6. The Chief Engineer and Surveyor shall make, or cause to be made, a city map, and duplicates of the same, to be disposed of as called for by City Charter. This map is to be made in sections, the scale not greater than one hundred feet to the inch, on which shall be placed all grades; (a) widths of streets, alleys and pavements, lengths of each square, all and any variation that may be found in them, centre stones, surveying and leveling marks, culverts, sewers, inlets, bridges, and all and any alteration, or alterations and additions, shall at once be recorded thereon, the grades shall be placed thereon as so many feet above mean low water, in the Christiana river at Market street bridge. He shall also cause to be made a book or books of plans of the City of Wilmington, divided into sections, each section to be one square, each section not to be over fifty feet to the inch, so far as the streets are or shall be laid out, which shall show the situation and dimensions of each property therein, with the city numbers thereof, and who are the owners, with such succession of blank columns as will permit the names of future owners to be entered therein, with the date of transfer, and with index for recording such names alphabetically. He shall bring up said book or books in their registry as near as practicable to the date of each annual meeting of the Board of Revision. He shall note, in an intelligible manner in their proper places, upon all said plots and diagrams, all permanent marks of reference, now made or which may be hereafter made, in any of the said squares, streets, alleys or public places, whether the same relate to lines, culverts, sewers, water-courses or bridges, explanations and descriptions of which shall be written in the proper books of reference, indexed and numbered. He shall record in a book, to be kept for that purpose, marked "street, angles and distances," an accurate description of the angles, the points of beginning and ending of each street line and distance between said points. He shall also record in another book, marked "grades of streets, sewers, drains, etc.," an accurate description of all grades of the streets, alleys, sewers, drains, etc. He shall also keep an order book, upon which shall, at once, be placed all orders for surveying, etc., the date when ordered, and the date to be placed thereon when done, also the amount of charges

Plans.

Order book.

for the same, which must be paid for when ordered, and it shall be his duty to have all orders for surveys to be made with the view to the erection of new buildings, or other work to be attended to within four working days after notice so to do is given. He shall, also, with the other Surveyors or Regulators, act in respect to party walls, etc., as is required by Sections [131, 132 and 133 of City Charter.]

Duties of as to party walls.

(*a*) Persons must take notice of the grades of streets as laid out on the city map or plan.

Cullen, J.: "If, however, you are satisfied from the proof offered, that the injury sustained was such as was necessarily incident to plaintiff's property by reason of its location, when the streets and sidewalks should be brought to the *grade then existing* when he purchased this house of which he was bound to take notice,—in such case your verdict should be for the defendants."

Benson vs. Mayor and Council of Wil., 9 Houst. 359 at 364. (yr. 1893)

See Clark vs. Wilmington, 5 Har. 243. (yr. 1849)

Accounts.

SEC. 7. The Chief Engineer and Surveyor shall collect and receive and keep an account thereof, in a book for that purpose, all the fees and charges connected with the office of the department of surveys; and he shall, at the close of each month, make returns, under oath or affirmation, to the City Auditor, of each item of moneys received by him, and immediately pay the same to the City Treasurer as other moneys belonging to the city are paid. He shall also make an annual report on the first of January, to the Council, in each and every year, of the action and work of this department, and therewith shall be an account of all moneys received and expended.

Report.

The Assistant Engineers shall keep a record of work done.

SEC. 8. Each Assistant Engineer or Regulator shall keep an accurate record, in a book provided by the city for that purpose, of all surveys and adjustments of party lines, and all other work done by him. He shall also designate the proper lines, levels and grades, as established by the confirmed plan of the city, and shall, when the Chief Engineer thinks necessary, furnish plans and drawings of the same; and he shall in every way assist and forward the work of the department, and all such plans, surveys, drawings, records, minutes, notes, memoranda and regulations shall be the property of the City of Wilmington.

Building lines obtained.

SEC. 9. If any person or persons shall begin the foundation or erect any buildings adjoining to or upon any street, road, lane, court or alley, or on the line of his, her or their neighbor's ground, without first applying to and having the line or lines thereof regulated and marked (*a*) by one of the Surveyors or Regulators, or shall deviate therefrom by extending his, her or their building or buildings beyond any or either of the lines or boundaries marked as aforesaid, unless determined otherwise by appeal, every owner or master-builder shall severally forfeit and pay the sum of fifty dollars; and any person or persons removing or defacing centre stones or other permanent surveying or leveling marks, shall also be liable in the sum of fifty dollars, to be recovered in the same manner as penalties of like amount are now or hereafter may be, by law recoverable, and said fines shall be paid into the city treasury.

Penalty for neglect or refusal.

Removing or defacing centre stones.

Penalty, $50.

(*a*) *The Court*: "The owners of lots hold them subject to this plan. * * Hence the necessity of applying to the regulators for building directions."
Clark vs. Wilmington, 5 Har. 243. (yr. 1894)
See Nivin vs. Stevens, 5 Har. 272 at 275. (yr. 1850)

Contracts certified.

SEC. 10. All contracts for grading, paving or curbing, entered into by the city, shall specify that the accurate measurement thereof, shall be certified by one of the Surveyors or Regulators, and no curbing shall be set, highways graded, nor gutters laid, unless in accordance with regulations furnished by one of the Surveyors or Regulators, under a penalty of twenty dollars, to be paid by the contractor, and shall be recovered as debts of like amount are, or may be by law recovered.

Penalty for violation, $20.

Office and custody of instruments, etc.

SEC. 11. A suitable office shall be provided for said department, in which shall be kept, under the custody of the Chief Engineer and Surveyor, all the instruments, books, records and plans relating to the surveys, regulations, sewerage and bridges connected with the City of Wilmington.

* * * * * * * * * *

That the fees and charges of the Department of Engineering

and Surveying shall be paid in advance, and shall be as follows, to wit: Feb. 8, 1853.

Fees.

For marking one building line.....$2.00
For marking two building lines..... 2.80
For marking three building lines..... 3.60
For marking four building lines..... 4.00
For marking front or building line of lot where more than one building is erected, each additional building line shall be charged one-half the usual rates, viz: 1.00
For marking grade and height of pavement at curb or building line for one building..... 2.00
For each additional contiguous building on the same grade 1.00
For marking curb line and height of curb in front of property not built upon for each front of fifty feet or less 2.00
For each additional contiguous front..... 1.00
For marking curb line and height of curb in front of dwelling not exceeding fifty feet..... 2.00
For marking curb line and height of curb in front of dwelling or other building more than fifty feet... 3.00
For each additional contiguous dwelling or building of less than fifty feet front..... 1.00
For measuring and valuing partition walls and making out certificate of valuation, each..... 2.00
For other services, not enumerated above, the fees to be charged according to the time required for the performance of the work, or to be agreed upon by the Chief Engineer and the party ordering the same.

The following charges shall be made for information furnished from the records of the department:

For examination of plans and records.....$0.25
For examination of plans, etc., and short abstract..... .50
For copies of documents, per 100 words..... .10
For copies of plans, per hour consumed in their preparation 1.00

For copies of plans, no charge less than one dollar.
For information from records of streets, sewers, culverts and drains ..... .50
For copy of official return of survey..... .50
Feb. 8, 1883. For official certificate ..... .50

Passed at City Hall, January 5, 1871.

CHAPTER IV

FIRE DEPARTMENT.

		Page
1.	Regulating the Fire Department	625
2.	Protection of Fire Apparatus	628
3.	Reorganization and Regulation of Fire Department	628
4.	Delaware Fire Engine Company	634
5.	Regulation of Street Cars and Vehicles in Case of Fires	635
6.	Badges of Firemen	636
7.	Liberty Fire Engine Company	637
8.	Fire Alarm Districts	638
9.	Water Witch Fire Engine Company	642
10.	Providing Horses and Wagons for Officers	643
11.	Salaries and Allowances of Certain Officers	644
12.	Independence Fire Company	644
13.	Brandywine Fire Company	645
14.	Union Fire Company	646

AN ORDINANCE to prevent damages from fire, and to regulate the Fire Department.

SECTION 1. If any inhabitant of this city shall cause or suffer his or her chimney to take fire, so that the same shall blaze out at the top, every such person shall forfeit and pay the sum of five dollars. (*a*) If any chimney shall take fire, so as to blaze out at the top, within thirty days after the same shall have been swept, the sweeper thereof, if he is his own master, or the master, if he has one, shall forfeit and pay the sum of one dollar.

Chimneys taking fire.

Penalty.

Liability of chimney sweeper.

(*a*) If a chimney become weakened from a fire so as to be in danger of falling, firemen may pull it down without being liable for damages.

J. M. Clayton, C. J.: "In the case of Dewey vs. White et al., 1 Moody & Malkin, 56, where a stack of chimneys belonging to a house close to a highway, which, by reason of a former fire was in immediate danger of falling on the highway, and was thrown down by some firemen belonging to the British fire office, it was held by *Best,* Chief Justice, in analogy to the doctrine of nuisances, that they were justified in so doing, and were not answerable in an action of trespass quare clausum fregit for damages unavodiably done to an adjoining house of the plaintiff, by forcing and throwing the stack of chimneys on its roof. These firemen were acting in this business for *the benefit of the public,* and the Chief Justice did not hesitate to declare,

that, as it was their right and their duty to do the act thus done, they were not answerable in that action.''

Huey vs. Richardson, 2 Har. 206 at 213-14. (yr. 1837)

License of chimney sweeper.

Penalty.

No person shall exercise the business of a chimney sweeper until he shall be licensed for that purpose by the Council; nor shall any such chimney sweeper charge more than ten cents per story for sweeping a chimney under the penalty of one dollar for each offence.

False alarm of fire.

Penalty.

SEC. 2. If any person or persons shall hereafter cause a false alarm of fire to be raised, within the limits of this city, or be concerned in raising said alarm, he, she or they, so offending, shall each forfeit and pay a fine of not less than one dollar, and not exceeding ten dollars, and shall suffer imprisonment until said fine and costs are paid.

Amended, Dec. 31, 1885; repealed, Aug. 5, 1886.

SEC. 3. * * * * * * * * * *

Removing of fire apparatus. Jan. 6, 1882.

Penalty.

SEC. 4. In the event of any fire company removing apparatus from their building between sunset and daybreak, [except on a fire alarm signal, struck from one of the boxes,] or without the knowledge of some officer of such company, of the absolute existence of fire, such company shall forfeit the sum of ten dollars for each and every such offence, to be deducted from the city appropriation.

Members shall not assemble after 10 o'clock P. M.

Penalty.

If any fire company shall permit or suffer its own members or any other person to assemble in the apparatus room belonging to said company, after the hour of ten o'clock P. M., they shall forfeit the sum of ten dollars, to be deducted as aforesaid. *Provided*, that nothing in this section shall be so construed as to prohibit the members of any company from entering or assembling in their house for the purpose of removing or replacing the apparatus during or immediately after a fire.

Racing of fire companies, etc., prohibited.

Penalty, $10.

SEC. 5. If any fire company shall be found racing (a) with another on returning from a fire or false alarm, and without having their bells muffled, the said company shall forfeit the sum of ten dollars, to be deducted out of the city appro-

priation as aforesaid; and if any fire company which may not belong within the limits of this city, entering the same during a fire, or an alarm of fire, shall not comply with and observe the provisions of this section, the member or members, or other person or persons, connected with the engine of the said company, violating or aiding and assisting to violate this provision, shall be arrested, and upon conviction thereof, shall forfeit and pay a fine of not less than one dollar and not more than ten dollars.

Visiting companies.

Penalty.

(*a*) *Lore, C. J.*: "If Courtney was racing with the driver of the Friendship engine, or was driving at an immoderate gait at the time of the accident, he was thereby violating ordinances of the city, and was guilty of negligence per se; and if his death resulted from such racing or immoderate gait, the plaintiff cannot recover. We cannot charge you, as requested by counsel for plaintiff, that the driver of the fire engine is governed by other rules, than an ordinary traveler on the highway, as to racing or going at an immoderate gait. Under the ordinance, he has the right of way, but in other respects he is subject to precisely the same rules as other travelers, that is, in driving on the streets he must use his senses, and take reasonable care and caution to avoid danger, and to prevent injury to himself and to others."

Carswell Admr. vs. Wilmington, 2 Marv. 360 at 365. (yr. 1897)

No minors, except those over eighteen years of age, who were members of a fire company at the time of the passage of the ordinance entitled, "A Supplement to an Ordinance, entitled An Ordinance for the better regulation of the Fire Department," passed at the City Hall, April 13, 1849, shall run with a fire engine or hose carriage, either to or from a fire, or during a false alarm, under a penalty of not less than one or more than ten dollars.

Minors, under 18 years, not allowed to run with fire companies.

Penalty.

Sec. 6. [The several fire companies shall, on the first Monday in May and October in each and every year, cause a practical test of their engines to be made at a place and in a manner to be decided upon by the Committee on Fire Companies of the Council. Said test to be under the control and direction of said committee.

Semi-annual test.

Ordinance, Sept. 1, 1887.

No company shall receive any portion of their annual appropriation, unless they comply with the above provision, and only such companies shall share such appropriations, whose apparatus shall be in a good and sufficient condition.]

SEC. 7. All ordinances and parts of ordinances in conflict with the foregoing provisions are hereby repealed.

Passed at City Hall, October 13, 1856.

AN ORDINANCE for the better protection of the fire apparatus.

Driving over hose.

SECTION 1. If any person or persons shall procure the passage of any cart, dray or wheeled wagon over the hose belonging to any fire company of this city, which has been laid for use at a fire or supposed fire, every person, so offending, shall forfeit and pay a fine of not less than five or more than ten dollars; *provided,* that this ordinance shall not be taken to apply to any person who may pass over such hose with a cart, dray or wheeled wagon which is designed to be used at such fire or supposed fire; the fines to be recovered before the [Municipal Court] as debts of like amount are recoverable by law.

Penalty.

Proviso.

Recovery of of fine.

Passed at City Hall, July 28, 1859.

AN ORDINANCE to further reorganize the Fire Department of the City of Wilmington.

Names of fire engine companies and their locations.

SECTION 1. The fire department of the City of Wilmington, shall consist of eight[1] steam fire engines, enumerated and located as follows:

Friendship—Location of engine house, Tenth and Shipley streets.[2]

Reliance—Location of engine house, Fifth between Walnut and Poplar.[3]

Delaware—Located, French street between Fifth and Sixth.

Phœnix—Located, Twelfth and King streets.

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1. Increased to twelve by subsequent ordinances.
2. Now located on Tatnall between Tenth and Eleventh streets.
3. Now located at southeast corner Fourth and Lombard streets.

Water Witch[1]—Located, Gilpin avenue near Scott street.

Fame Hose—Located, Second street between Shipley and Orange.[2]

Washington—Located, French between Third and Fourth.

Weccacoe—Located, Jackson street between Front and Second.[3]

[Liberty[4]—Located, New Castle avenue and A street.]

[Brandywine[5]—Located, 25th and Market streets.]

[Union[6]—Located, Lancaster avenue and Union street.]

[Independence[7]—Located, 17th and Claymont streets.]

Department may be increased.

SEC. 2. The Fire Department at any time may be increased by application to the Council, two-thirds of the members thereof concurring by ordinance being read at three regular stated meetings of the Council.

Superceded by Chapter 212, Vol. 19, Laws of Del., passed May 5, 1891.

SEC. 3. * * * * * * * * * *

Qualifications and powers of Chief Engineer.

SEC. 4. The Chief Engineer, who shall at least be of the age of twenty-five years, and shall have been a resident of this city for five years immediately previous to his election, and shall assume the duties of his office on the first Monday in May. He shall have full control of the Fire Department at all fires, assign to each company their respective duties when necessary, and dismiss them when their services are no longer required.[8]

Make rules.

He may prescribe rules (*a*) for the regulation and management of the companies at fires, and on going to and returning from fires.

(*a*) As to the meaning of the word "rules" see the case of Morris et at vs. Pilot Coms., 7 Del. Ch. 136. (yr. 1894) (See Sec. 76 "a" of the Charter.)

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1. Reorganized, reincorporated and reinstated, location being changed. See ordinance of August 10, 1893, page 642, and Vol. 20 D. L. 670.
2. Reincorporated as Fame Fire Company.
3. Now located at southeast corner Second and Jackson streets.
4. See ordinance of March 26, 1891. Page 637 this volume.
5. See ordinance of March 31, 1903. Page 645 this volume.
6. See ordinance of June 30, 1903. Page 646 this volume.
7. See ordinance of September 14, 1905. Page 644 this volume.
8. For duties of Chief Engineer as to fire escapes, see Revised Code, of 1893 as amended, page 929.

Call the police.

He shall have power to summons the police for maintaining order, and protecting property during the continuance of fires, and when necessary, in his judgment, shall cause ropes to be placed across the streets to prevent accidents, and admit none within the limits enclosed excepting equipped firemen and those immediately interested in the property. He shall [at the first stated meeting in each month make a report to the Council of all fires, the losses thereby and the condition of the companies in service at said fire or fires, and] at the last stated meeting of the Council in the month of April each year, render a report containing an account of all fires during the year, with the probable cause and loss, as nearly as can be ascertained. Also, the number of active members, number of feet of hose, and condition of apparatus and hose of each company. It shall be his duty to be present at all fires, and wear at such times a suitable badge or dress, whereby his office may be readily recognized. He shall receive for his services [six] hundred dollars per annum, paid [monthly.][1]

Enclosure of fire.

Each month make a report to the Council of all fires. Ordinance, May 10, 1894.

Duties of Chief-Engineer.

Report.

Dress.

Ordinance, May 24, 1900.

Salary.

Duties of Assistant Engineers.

SEC. 5. It shall be the duty of the Assistant Engineers, who shall possess all the qualifications of the Chief Engineer, to be present at all fires, and assist the Chief Engineer in the discharge of the duties of his office, and in the absence of the Chief Engineer, the First Assistant shall assume the duties of his office and in the absence of the others the Second Assistant shall perform said duties, and be obeyed accordingly. They shall wear badges to designate their office, and shall be paid for their services (three)[2] hundred dollars each per annum, payable [monthly.]

Salaries of Assistant Engineers.

Ordinance, May 24, 1900.

Use of apparatus. Ordinance, Sept. 26, 1901.

SEC. 6. No fire company shall attend any fire outside of the city limits, nor send, suffer, or permit its engine and apparatus to be present at such fire, unless with the consent of the Chief Engineer, or the Assistant Engineer in charge. No fire company shall permit its fire apparatus to be used on a trial

1. Salary of Chief Engineer now is $900. See ordinance Sept. 27, 1909, page 644 of this volume.

2. Salary of Assistant Engineers now is $400. See ordinance Sept. 27, 1909, page 644 of this volume.

of skill, or for testing the power or capacity of its engine. Should any of the fire companies refuse to obey the authority or lawful commands of the Chief Engineer, or of the Assistant Engineer in charge, or be engaged in riotous or disorderly conduct, the Chief Engineer may suspend such company or companies from active service for a period of not less than one, nor more than three months, and shall report the same to the Council. The appropriation for such company or companies shall be discontinued during the time it or they are out of service. From the decision of the Chief Engineer, provided for in this section, there shall be no appeal.

Disobedience.

Misconduct.

Suspension.

No appeal.

SEC. 7. After the passage of this ordinance, each fire company shall cause to be worn by its members, during the time of fires, a uniform badge, made of metal, with the name of the fire department and number thereon; said badge shall be the property of the company. Any person not a member of the department wearing such badge, or what purports to be a badge of any fire company, shall forfeit and pay a fine of five dollars.

Badges.

It shall be the duty of the Secretary of each company to keep a register of the members of the company, with the corresponding numbers of their badges, and to furnish the Chief of Police, Chief Engineer, and two Assistant Engineers with a copy of the members, and the number of their badges, and to report all changes in the list of members, showing the new members, and those that have been expelled.

Register of numbers.

SEC. 8. Should charges be preferred by any two companies against the Chief Engineer, or Assistants, for conduct unbecoming an officer, or failure to perform their duties, he or they shall be tried by the Council, and if the charges be sustained, he, or they, shall be dismissed, *and a new election ordered to fill the vacancy or vacancies.*

Charges against Chief Engineer and assistants.

See 19 D. L. 423.

SEC. 9. [If by accident to any engine, hose carriage or other fire apparatus of any fire company, the said fire company shall be thrown out of service, the President of said company shall immediately make a report to the Chief Engineer,

Ordinance, Dec. 12, 1901. Any accident to fire apparatus president of company to notify Chief Engineer.

Reason for loss of service, etc.

stating the reason for the loss of service of said company and the probable length of time that said loss of service may continue. Upon the receipt of this report, it shall be the duty of the Chief Engineer immediately to notify any fire company which he may see fit, to respond to all alarms which said company out of service would ordinarily respond to, for and during the period of time the said company shall be out of service. Whenever any fire company shall be called out of the city, it shall be the duty of the Chief Engineer to notify any company which he may see fit, to respond to all alarms which said company out of the city would ordinarily respond to, for and during the period of time which said absence from the city may continue.

Chief Engineer to assign another company.

To assign another company when any company is called out of city.

To first secure other apparatus before sending away any apparatus for repairs.

It shall be the duty of every fire company before sending away for repairs any of its fire apparatus, to first secure apparatus to take the place of that about to be sent away for repairs.

Company out of service, or fails to comply with provisions.

Fire committee may withhold and deduct from appropriation.

If any fire company shall remain out of service more than thirty (30) days, or shall fail to comply with any of the provisions of this section for more than thirty (30) days, the Fire Committee of Council may, in its discretion, withhold and deduct from the fire appropriation to said company the sum of five dollars ($5) per day for each and every day, after said period of thirty (30) days, during which said fire company shall be out of service or shall fail to comply with any of the provisions of this section.]

Hose.

SEC. 10. It shall be the duty of each company to have constantly on hand not less than one thousand feet of good, serviceable hose, and to keep their apparatus in good order.

Jones coupling.

After the passage of this ordinance, all companies procuring hose shall have attached the Jones coupling, Pittsburg standard, and the fire plugs throughout the city shall have attached to them a uniform standard of outlet.

Report.

The Chief Engineer shall see that the companies comply with the provisions of this section, and shall report upon the same monthly to the Fire Committee of Council.

Each company shall also be required, within two months after the passage of this ordinance, to procure two relief valves and stop nozzles. Valves and nozzles.

Penalty for striking false alarm.

Damage to wires.

Advertising signs.

Penalty.

SEC. 11. After the passage of this ordinance, any person or persons who may cause a false alarm to be struck upon the fire alarm telegraph of this city, knowing such alarm to be false, or who shall himself knowingly strike such false alarm, shall be liable to a penalty of not less than ten dollars nor more than twenty dollars. Any person or persons who shall wilfully damage or place any obstruction upon the fire alarm telegraph wires, or who shall damage, mutilate, or in any way unlawfully interfere with the wires, poles, boxes, or any other property belonging to the said fire alarm telegraph, or who shall place or cause to be placed on any of the fire alarm telegraph poles, advertising signs of any description, or who shall have in their possession keys to any of the fire alarm boxes, without permission of the Fire Committee of Council, with the intention of using the same, shall, upon conviction thereof, be fined in a sum not less in amount than twenty dollars nor more than fifty dollars; one-half of the fines created by this section shall be for the use of the city, and one-half for the informer.

April 27, 1893.

Master keys to fire alarm boxes.

[That it shall not be lawful for any person other than the Chief Engineer of the Fire Department, and the First and Second Assistant Engineers, and the Superintendent of the Fire Alarm Telegraph and his linemen, to use or cause to be used a master key, or release key used in the fire alarm boxes of this city, or to have in his possession such key with the intention of using the same, as aforesaid, and any one other than the above officers mentioned, who shall use or cause to be used the said master key, or release key, in any of the fire alarm boxes in this city, or have such key in his possession with the intention of using the same, as aforesaid, shall, upon conviction thereof before the Municipal Court for the City of Wilmington, forfeit and pay a fine of twenty-five dollars, besides cost of suit.]

It shall be the duty of the Chief Engineer and Assistant Engineers to prosecute all violations of this section coming to their notice.

Repealed by 25 D. L. 315.

SEC. 12. * * * * * * * * * *

Inspection.

It shall be the duty of the Fire Committee of Council to annually, during the month of February, inspect the fire department and make report of the condition thereof to the City Council within thirty days after said inspection.

SEC. 13. The ordinance entitled, "An Ordinance Reorganizing the Fire Department of the City of Wilmington," passed at the City Hall, June 14th, 1877, and all other ordinances, and parts of ordinances inconsistent with this ordinance are hereby repealed.

Passed at City Hall, October 28, 1881.

AN ORDINANCE relating to the "Delaware Stean Fire Engine Company, No. 3, of Wilmington, Delaware."

Preamble.

WHEREAS, The "Delaware Steam Fire Engine Company, No. 3, of Wilmington, Delaware," hath, by a communication presented to this Council on March 17th, 1882, represented that a hook and ladder, exclusively, is much needed in the fire department of this city, and by said communication hath signified a willingness on their part to effect such a change;

AND WHEREAS, The Council have adopted the report of the Committee on Fire Companies, to whom the said communication was referred, recommending the said change; now, therefore,

BE IT ORDAINED by the Council of Wilmington:

Company directed to sell engine, etc.

SECTION 1. That the "Delaware Steam Fire Engine Company, No. 3, of Wilmington, Delaware," be, and the said company are hereby authorized and directed, without delay, after the passage of this ordinance, to sell and dispose of, on such terms as the said company shall deem advantageous, the steam fire engine, hose carriage, and all apparatus appertaining to

the same, belonging to the said company, and to procure and purchase out of the proceeds arising from such sale or disposal, or any other moneys in the treasury of said company, a first-class truck, with all the latest improvements, including four Babcock fire extinguishers. The said truck shall consist of not less than nine ladders, one of said ladders to be an extension ladder not less than eighty (80) feet long. *Provided, however,* that no extra pay or compensation shall be allowed to said company to carry into effect the provisions hereinbefore mentioned. Truck, etc.

SEC. 2. * * * * * * * * 25 D. L. 315.

SEC. 3. All ordinances or parts of ordinances inconsistent with or contrary to the provisions of this ordinance are hereby repealed, made null and void.

Passed at City Hall, April 28, 1882.

AN ACT in relation to fires.

SECTION 1. That from and after the passage of this ordinance, it shall be the duty of all conductors and drivers of street railroad cars, upon the approach of any fire apparatus, on its way to a fire, to cause such street railroad cars to come to a stand-still, until such fire apparatus shall have passed such street railroad car, whether such fire apparatus be approaching such street car in front, or rear, and all drivers of any other vehicle upon the public streets or highways of this city, shall, upon the approach, whether in front or rear of any fire apparatus, on its way to a fire, cause such vehicle to be drawn to the curb line of such public street or highway, and there remain standing until such fire apparatus shall have passed, or shall, at the approach of such fire apparatus, draw off on the first cross street or as soon as may be practicable. Duty of conductors of street cars. Drivers of vehicles.

SEC. 2. Any person refusing or neglecting to comply with the provisions of this ordinance shall, on conviction thereof, be fined in the sum of five dollars for the use of the city. Penalty for violation.

Duty of locomotive engineers.

SEC. 3. It shall not be lawful for engineer in charge of any locomotive engine, or conductor in charge of any train of cars upon any railway tracks, to run the same over any line of hose laid across the railroad tracks during an alarm of fire, nor shall it be lawful for any railway employees in any way during any fire, or fire alarm, to interfere with the fire department, and any person neglecting or refusing to obey the provisions of this section shall, upon conviction thereof, pay a fine of two hundred dollars.

Penalty.

Passed at City Hall, May 10, 1883.

AN ORDINANCE to regulate fire badges.

Description of official badge.

SECTION 1. That the following shall be the official badge of the Fire Department of the City of Wilmington: a shield-shaped badge two and one-fourth inches in length and one and three-fourths inches in width, made of German silver, nickle-plated, with the words "Wilmington Fire Department" and a number thereon in raised letters and figures, and no two badges shall contain the same number.

Distribution.

SEC. 2. That the Committee on Fire Companies shall deliver to each of the fire companies of this city one hundred of such official badges numbered consecutively, to be distributed among the members of said companies; and it shall be the duty of the Secretary of each fire company, within thirty days after the receipt of such badges, to furnish to the said committee and to the Chief of the Fire Department a list showing to whom each of said badges are given; and it shall also be the duty of the Secretary of each fire company to notify the said committee and Chief Engineer without delay of any and all changes in the possession of said badges.

Lists.

Changes in lists.

Penalty for wearing improper badge.

SEC. 3. If any person not being a member of one of the fire companies of this city shall wear on his person or have in his possession one of such official badges, or if any member of either of the fire companies shall wear one of said badges other than his own, upon conviction thereof before the Municipal Court of said city he shall forfeit and pay a fine of five dollars.

SEC. 4. Every member of the several fire companies of this city while in service at a fire * * * shall wear in a conspicuous place on his clothes his own official badge; and it shall be the duty of the Chief Engineer, or other person having charge of the Fire Department at the fire, or the police officer in charge of the police force present at the fire, to keep all other persons [except members of the Fire Department wearing the badge or service equipments of the several companies of the department] outside of the fire ropes placed at any fire. Amendment, Aug. 3, 1893. Fire ropes. Amendment, Aug. 3, 1893.

Passed at City Hall, September 8, 1892.

AN ORDINANCE increasing the Fire Department of the City of Wilmington.

WHEREAS, "The Liberty Steam Fire Engine Company, No. 9, of the City of Wilmington, Delaware," hath by an Act of the General Assembly of the State of Delaware, passed at Dover, February 12, A. D. 1891, become an incorporated body, and are now fully equipped for duty and ready to do service as a fire company; and Preamble.

WHEREAS, The said "The Liberty Steam Fire Engine Company, No. 9, of the City of Wilmington, Delaware," is situated at the corner of New Castle avenue and A street, in South Wilmington, and in a portion of the city wholly unprotected by any other fire company; now therefore,

BE IT ORDAINED by "The Council" of Wilmington, two-thirds of the members thereof herein concurring:

SECTION 1. That "The Liberty Steam Fire Engine Company, No. 9, of the City of Wilmington, Delaware," be and the same is hereby made and constituted a member of the Fire Department of the City of Wilmington under and subject to all the laws, ordinances, rules and regulations of said city or State now in force or that may hereafter be passed or established, relating to the Fire Department of said city. Liberty Steam Fire Engine Co., No. 9.

SEC. 2. That the said "The Liberty Steam Fire Engine Company, No. 9, of the City of Wilmington, Delaware," shall

Location. be located at the corner of New Castle avenue and A street, in said City of Wilmington.

Passed at City Hall, March 26, 1891.

AN ORDINANCE in relation to the Fire Department of the City of Wilmington.

Amendment, Ordinance, Oct. 1, 1906. [That Section 1 of an ordinance entitled, "An Ordinance in Relation to the Fire Department of the City of Wilmington," passed February 9th, 1895,[1] as amended by an ordinance passed December 22d, 1898, be and the same is hereby amended and inserting in lieu thereof, and as a substitute therefore, the following:

SECTION 1. That from and after the first day of September, A. D. 1906, the several fire companies of the Fire Department of the City of Wilmington shall respond to alarms of fire from the fire alarm boxes hereinafter designated for each company respectively, and in the manner and order hereinafter designated.

Friendship Steam Fire Engine Company shall respond to alarms from the following boxes:

First Alarm—3, 5, 6, 7, 8, 9, 12, 18, 27, 28, 32, 34, 35, 43, 45, 46, 51, 64, 71, 73, 112, 113, 114, 116, 117, 123, 127, 134, 136, 143, 145, 152, 154, 164, 212, 214, 215, 216, 223, 224, 225, 226, 234, 241.

Second Alarm—13, 14, 15, 16, 21, 23, 24, 26, 36, 41, 52, 54, 61, 72, 115, 126, 132, 142, 162, 163, 213, 236.

Third Alarm—17, 25, 31, 42, 53, 62, 63, 124, 125, 135, 153, 231, 235.

Reliance Steam Fire Engine Company shall respond to alarms from the following boxes:

First Alarm—6, 9, 12, 13, 14, 15, 16, 17, 21, 23, 41, 42, 52, 54, 61, 64, 113, 115, 117, 125, 126, 132, 162, 163, 212, 213, 231, 235.

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1. This is an error. It should be 1893.

Second Alarm—7, 18, 24, 26, 31, 32, 34, 35, 36, 46, 51, 62, 71, 114, 116, 123, 124, 135, 142, 143, 145, 152, 153, 154, 164, 214, 215, 223, 224.

Third Alarm—3, 5, 8, 25, 27, 28, 43, 45, 52, 53, 63, 72, 112, 127, 134, 136, 216, 225, 226, 234, 236, 241.

Phœnix Steam Fire Engine Company shall respond to alarms from the following boxes:

First Alarm—3, 6, 7, 9, 12, 13, 16, 18, 21, 27, 28, 32, 45, 46, 51, 52, 61, 64, 73, 112, 113, 115, 116, 117, 123, 127, 134, 136, 143, 145, 154, 162, 163, 164, 214, 215, 216, 223, 224, 234, 241.

Second Alarm—5, 8, 14, 15, 17, 34, 35, 41, 42, 43, 54, 71, 72, 114, 125, 126, 132, 142, 152, 212, 213, 225, 226, 236.

Third Alarm—23, 24, 25, 26, 31, 36, 53, 62, 63, 124, 135, 153, 231, 235.

Water Witch Steam Fire Engine Company shall respond to alarms from the following boxes:

First Alarm—3, 5, 7, 8, 27, 28, 31, 34, 43, 45, 51, 53, 63, 72, 73, 112, 116, 127, 134, 136, 153, 216, 223, 225, 226, 236, 241.

Second Alarm—6, 12, 13, 18, 25, 32, 46, 113, 114, 123, 135, 143, 154, 162, 163, 212, 234.

Third Alarm—9, 14, 15, 16, 17, 21, 23, 24, 26, 35, 36, 41, 42, 52, 54, 61, 62, 64, 71, 115, 117, 124, 125, 126, 132, 142, 145, 152, 164, 213, 214, 215, 224, 231, 235.

Fame Steam Fire Engine Company shall respond to alarms from the following boxes:

First Alarm—5, 7, 9, 12, 13, 14, 17, 23, 24, 25, 26, 31, 32, 34, 35, 36, 41, 54, 61, 62, 71, 72, 114, 123, 124, 126, 132, 135, 142, 152, 153, 212.

Second Alarm—3, 6, 8, 15, 21, 28, 42, 43, 53, 63, 115, 116, 117, 125, 213, 216, 223, 231, 234, 235, 236, 241.

Third Alarm—16, 18, 27, 45, 46, 51, 52, 64, 73, 112, 113, 127, 134, 136, 143, 145, 154, 162, 163, 164, 214, 215, 224, 225, 226.

Washington Fire Company shall respond to alarms from the following boxes:

First Alarm—7, 9, 12, 13, 14, 15, 17, 18, 21, 23, 24, 26, 32, 35, 41, 42, 46, 54, 61, 71, 115, 117, 123, 124, 125, 126, 132, 142, 143, 162, 163, 212, 213, 231, 235.

Second Alarm—3, 5, 6, 8, 16, 25, 27, 28, 31, 34, 36, 45, 51, 52, 53, 62, 63, 64, 72, 113, 114, 116, 134, 136, 145, 152, 153, 154, 164, 214, 215, 223, 224, 234, 236, 241.

Third Alarm—43, 73, 112, 127, 135, 216, 225, 226.

Weccacoe Steam Fire Engine Company shall respond to alarms from the following boxes:

First Alarm—5, 8, 23, 24, 25, 26, 28, 31, 32, 34, 35, 36, 41, 43, 53, 54, 62, 63, 71, 72, 114, 116, 124, 126, 135, 142, 152, 153, 212, 223, 236.

Second Alarm—7, 9, 12, 14, 17, 45, 61, 73, 112, 123, 127, 132, 136, 216, 241.

Third Alarm—3, 6, 13, 15, 16, 18, 21, 27, 42, 46, 51, 52, 64, 113, 115, 117, 125, 134, 143, 145, 154, 162, 163, 164, 213, 214, 215, 224, 225, 226, 231, 234, 235.

Liberty Steam Fire Engine Company shall respond to alarms from the following boxes:

First Alarm—13, 14, 15, 16, 17, 21, 41, 42, 54, 61, 115, 125, 126, 132, 142, 162, 163, 213, 231, 235.

Second Alarm—12, 35, 52, 64, 113, 117, 164, 224.

Third Alarm—3, 5, 6, 7, 8, 9, 18, 23, 24, 25, 26, 27, 28, 31, 32, 34, 36, 43, 45, 46, 51, 53, 62, 63, 71, 72, 73, 112, 114, 116, 123, 124, 127, 134, 135, 136, 143, 145, 152, 153, 154, 212, 214, 215, 216, 223, 225, 226, 234, 236, 241.

Brandywine Fire Company shall respond to alarms from the following boxes:

First Alarm—3, 6, 7, 16, 18, 46, 51, 52, 64, 113, 136, 143, 145, 154, 162, 164, 214, 215, 224, 234.

Second Alarm—9, 27, 43, 45, 61, 73, 112, 117, 123, 127, 134, 163, 212, 223, 225, 226, 241.

Third Alarm—5, 8, 12, 13, 14, 15, 17, 21, 23, 24, 25, 26, 28, 31, 32, 34, 35, 36, 41, 42, 53, 54, 62, 63, 71, 72, 114, 115, 116, 124, 125, 126, 132, 135, 142, 152, 153, 213, 216, 231, 235, 236.

Union Fire Company shall respond to alarms from the following boxes:

First Alarm—5, 24, 25, 26, 27, 31, 35, 36, 43, 53, 62, 63, 71, 72, 73, 112, 127, 135, 153, 216, 225, 226, 236, 241.

Second Alarm—23, 34, 41, 54, 114, 124, 152.

Third Alarm—3, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 21, 28, 32, 42, 45, 46, 51, 52, 61, 64, 113, 115, 116, 117, 123, 125, 126, 132, 134, 136, 142, 143, 145, 154, 162, 163, 164, 212, 213, 214, 215, 223, 224, 231, 234, 235.

Independence Fire Company shall respond to alarms from the following boxes:

First Alarm—6, 15, 16, 17, 18, 21, 42, 46, 52, 64, 113, 115, 125, 143, 162, 163, 164, 214, 215, 224, 234.

Second Alarm—3, 117, 132, 154, 213, 231, 235.

Third Alarm—5, 7, 8, 9, 12, 13, 14, 23, 24, 25, 26 27, 28, 31, 32, 34, 35, 36, 41, 43, 45, 51, 53, 54, 61, 62, 63, 71, 72, 73, 112, 114, 116, 123, 124, 126, 127, 134, 135, 136, 142, 145, 152, 153, 212, 216, 223, 225, 226, 236, 241.

Delaware Hook and Ladder Company shall respond to all alarms of fire in the city.

The Phœnix Hook and Ladder Company shall respond to all alarms of fire in the city.

The Washington Chemical Engine will respond to the following boxes on first alarm: 3, 6, 7, 9, 12, 13, 14, 15, 16, 17, 18, 21, 23, 24, 32, 35, 41, 42, 46, 51, 52, 54, 61, 64, 113, 115, 117, 123, 125, 126, 132, 142, 145, 154, 162, 163, 164, 213, 214, 215, 224, 231, 234, 235.

The Weccacoe Chemical Engine will respond to the following boxes on first alarm: 5, 8, 12, 23, 24, 25, 26, 27, 28, 31, 32, 34, 35, 36, 41, 43, 45, 53, 54, 62, 63, 71, 72, 73, 112, 114, 116, 123, 124, 126, 127, 134, 135, 136, 142, 152, 153, 212, 216, 223, 225, 226, 236, 241.

When additional boxes are placed the Chief Engineer and Assistant Engineer shall have authority to assign them to the different engine companies.]

Special calls.

SEC. 2. The Chief Engineer, upon special emergencies, when in his judgment it is undesirable that a regular alarm should be given, shall have authority to call out by special fire alarm calls, to be by him designated, one or more of the said companies for service at any fire in the city, and the company or companies so called out shall respond to such special calls.

New fire alarm boxes.

SEC. 3. The Chief Engineer shall have power to designate the company or companies which shall respond to alarms of fire from any new fire alarm boxes hereafter established.

Refusal to respond to alarms.

Penalty.

SEC. 4.[1] If any fire company shall refuse or neglect to respond to the fire alarms in the manner herein designated, the Chief Engineer shall report the same to the Council, and such company shall forfeit a sum equal to one-twelfth of the annual appropriation made to such company, said sum to be deducted from said appropriation for the then current year, if any portion thereof shall then remain unpaid, otherwise from the appropriation for the next succeeding fiscal year; *provided however*, that this section shall not apply during such time as the fire apparatus of any company is disabled temporarily by accident.

Proviso.

No appeal.

From the decision of the Chief Engineer provided for in this section there shall be no appeal.

Passed at City Hall, February 9, 1893.

AN ORDINANCE increasing the Fire Department of the City of Wilmington.[2]

Preamble.

WHEREAS, The Water Witch Steam Fire Engine Company, No. 5, of Wilmington, Delaware, has, by an Act of the

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1. See 25 D. L. 315 as to agreements with fire companies.

2. For powers of the Water Witch Steam Fire Engine Company, No. 5, see 20 D. L. 670 and amendments thereto, page 538 this volume.

General Assembly of the State of Delaware, passed at Dover, April 12, A. D, 1893, become a reincorporated body, and is now fully equipped for duty, and ready to do service as a fire company; and,

WHEREAS, The said The Water Witch Steam Fire Engine Company, No. 5, of Wilmington, Delaware, is situated on Gilpin avenue near Scott street in the northwestern part of the city, which locality has heretofore been unprotected by reason of being more than one mile from any engine house; now, therefore, Preamble.

BE IT ORDAINED, by The Council, two-thirds of the members thereof herein concurring:

SECTION 1. That The Water Witch Steam Fire Engine Company, No. 5, of Wilmington, Delaware, be and the same is hereby made and constituted a member of the Fire Department of the City of Wilmington, under and subject to all the laws, ordinances, rules and regulations of said city or State now in force or that may hereafter be passed or established, relating to the fire department of said city. Water Witch Company reinstated.

SEC. 2. That the said The Water Witch Steam Fire Engine Company, No. 5, of Wilmington, Delaware, shall be located on Gilpin avenue between Scott and Lincoln streets, in said City of Wilmington. Location.

Passed at City Hall, August 10, 1893.

AN ORDINANCE to provide and maintain horses, wagons and harness for the use of certain officers of the Fire Department.

SECTION 1. That as soon as practicable after the passage of this ordinance the Council shall provide the Chief Engineer and the First and Second Assistant Engineers of the Fire Department of the City of Wilmington, each, with a horse, wagon and harness for the use of said officers and their respective successors in office. Council shall provide a horse, etc., for the Chief Engineer and the First and Second Assistant Engineers.

Not to be used except in performance of duties.

SEC. 2. That said officers shall not be allowed to use said horses, wagons and harness, except when engaged in the performance of the duties of their office.

Supplied by ordinance of Sept. 27, 1909.

SEC. 3. * * * * * * * * * *

SEC. 4. That all ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Approved August 1, 1906.

AN ORDINANCE to provide for the salaries of certain officers of the Fire Department of the City of Wilmington, and the amounts to be allowed them for the care of horses and wagons.

BE IT ORDAINED by the Mayor and Council of Wilmington:

SECTION 1. That after the first day of September, A. D. 1909, the Chief Engineer of the Fire Department shall receive an annual salary of $900, payable in monthly payments of $75.00; the First Assistant Engineer and the Second Assistant Engineer of the said Department shall each receive an annual salary of $400.00, payable in monthly payments of $33.33.

Salaries of Chief Engineer and First and Second Assistants.

Allowance for horse and carriage.

SEC. 2. The Chief Engineer of the said Fire Department and the First and Second Assistant Engineer of the Fire Department shall each receive $25.00 per month as an allowance for the boarding and shoeing of a horse and the housing of a carriage.

Act is retroactive.

SEC. 3. This act is expressly made retroactive to take effect from the first day of September, A. D. 1909, and all ordinances or parts of ordinances providing for compensation to any of the officers mentioned in Section 1, of this ordinance, are hereby expressly repealed.

Approved September 27, 1909.

AN ORDINANCE increasing the Fire Department of the City of Wilmington.

Preamble.

WHEREAS, The Independence Steam Fire Engine Company, No. 12, of the City of Wilmington, Delaware, hath, un-

der the General Corporation Laws of the State of Delaware, passed at Dover, March 10th, A. D. 1899, and amended March 7th, A. D. 1901, become an incorporated body, and are now equipped for duty and ready to do service as a fire company; and

WHEREAS, The said Independence Steam Fire Engine Company, No. 12, of the City of Wilmington, Delaware, is situated at the corner of Twelfth and Claymont streets, in a portion of the city wholly unprotected by any other fire company, and has been an incorporated body since November 21st, A. D. 1901, and doing active service in this city; now therefore,

BE IT ORDAINED by the Council of Wilmington (two-thirds of all the members thereof herein concurring):

Independence Fire Co. made a member of the Fire Department.

SECTION 1. That from and after September first, A. D. 1906, The Independence Steam Fire Engine Company, No. 12, of the City of Wilmington, Delaware, shall be a member of the Fire Department of the City of Wilmington, under and subject to all the laws, ordinances, rules and regulations of said city or State then in force or that may thereafter be passed or established, relating to the Fire Department of said city.

Location.

SEC. 2. That the said Independence Steam Fire Engine Company, No. 12, of the City of Wilmington, Delaware, shall be located at the corner of Twelfth and Claymont streets in said City of Wilmington.

Approved September 14, 1905.

AN ORDINANCE providing for an appropriation[1] *for the Brandywine Fire Company, No. 10, of Wilmington, Delaware.*

WHEREAS, Brandywine Fire Company, No. 10, of Wilmington, Delaware, incorporated under the laws of the State of Delaware, has been duly recognized by the Council of Wilmington as a part of the Fire Department of the said city,

1. See 25 D. L. p. 315 as to agreements "The Council" makes with fire companies, p. 553 of this volume.

and has established itself in said city with appropriate apparatus for extinguishing fires; and,

22 D. L. 830.

WHEREAS, At the last session of the Legislature of the State of Delaware, an Act entitled, "An Act to Authorize the Mayor and Council of Wilmington, Delaware, to appropriate money for Brandywine Fire Company, No. 10, of Wilmington, Delaware," was approved on the second day of February, A. D. 1903, authorizing an appropriation by the Mayor and Council of Wilmington of Twenty-five Hundred Dollars per annum to the said Brandywine Fire Company, No. 10, now, therefore, in pursuance and by virtue of the power and authority of the Act of the General Assembly in that behalf,

BE IT ORDAINED by the Council of Wilmington:

See provisions of 25 D. L. 315.

SECTION 1. That immediately after the passage of this ordinance, the sum of Twelve Hundred and Fifty Dollars ($1250.00) shall be paid by the Mayor and Council of Wilmington to Brandywine Fire Company, No. 10, of Wilmington, Delaware, and that hereafter upon the first days of September and March of each and every year, the said Brandywine Fire Company, No. 10, shall be paid a semi-annual sum of Twelve Hundred and Fifty Dollars ($1250.00), said company to be paid in the same manner and subject to the same conditions and requirements of the laws and ordinances of the City of Wilmington as the other fire companies of said city.

Approved March 31, 1903.

AN ORDINANCE increasing the Fire Department of the City of Wilmington.

WHEREAS, The Union Fire Company, No. 11, of the City of Wilmington, Delaware, has become an incorporated body under the laws of the State of Delaware, and is now fully equipped for duty and ready to do service as a fire company; and,

WHEREAS, The said Union Fire Company, No. 11, is located in the Twelfth Ward of the City of Wilmington and in a part of said city not adequately protected by any other fire

company, and in which part of said city there is urgent need of a new fire company,

Now, Therefore, Be it ordained by the Council of Wilmington:

Section 1. That the Union Fire Company, No. 11, of the City of Wilmington, Delaware, be and the same is hereby made and constituted a member of the Fire Department of the City of Wilmington, under and subject to all the laws, ordinances, rules and regulations of said city or State, now in force or that may hereafter be passed or established, relating to said Fire Department of said city. Union Fire Co. made a member of the Fire Department.

Sec. 2. That said Union Fire Company, No. 11, shall be located in that part of the City of Wilmington known as the Twelfth Ward. Location.

Sec. 3. * * * * * * * * * Supplied by 25 D. L. 315.

Sec. 4. All ordinances or parts of ordinances inconsistent with or contrary to the provisions of this ordinance are hereby repealed, made null and void.

Approved June 30, 1903.

CHAPTER V

POLICE DEPARTMENT.

[NOTE.—The ordinances relating to the Police Department are superseded by the Act of the General Assembly, entitled "An Act to provide for a Municipal Police Commission for the City of Wilmington," passed April 18th, 1893, and by the rules and regulations adopted by the Board of Police Commissioners, pursuant to the provisions of said Act.]

CHAPTER VI

ORDINANCES RELATING TO THE CITY DEBT.

		Page
1.	Loan for New Reservoir, $125,000	650
2.	Loan to Purchase Water Rights, $60,000	650
3.	Loan for Water Commissioners, $60,000	651
4.	Loan for Park Purposes, $150,000	653
5.	Loan for Water Commissioners	655
6.	Loan for Improving Streets, $100,000	657
7.	Loan for Improving Streets, $200,000	659
8.	Loan for Improving Streets, $200,000	662
9.	Loan to Redeem Outstanding Bonds, $24,000	664
10.	Sinking Fund Bonds, $30,000	666
11.	Sinking Fund Bonds, $20,000	668
12.	Loan for Improving Streets, $125,000	669
13.	Loan to Purchase Park Lands, $50,000	671
14.	Loan for Improving Streets, $125,000	673
15.	Loan to Redeem Outstanding Bonds, $176,000	676
16.	Loan to Improve Park Lands, $25,000	678
17.	Loan for Silverbrook Sewer, &c., $75,000	680
18.	Loan for Silverbrook Sewer, &c., $50,000	682
19.	Loan for Mayor and Council and to Pay Mortgage on Public School No. 9, $50,000	684
20.	Loan for Park Purposes, $15,000	686
21.	Loan to Improve Streets and Extend Sewers, $25,000	688
22.	Loan to Improve Streets and Extend Sewers, $25,000	690
23.	Loan for Improvement of Parks, $15,000	692
24.	Loan to Purchase and Improve Parks, $30,000	694
25.	Loan to Improve Streets and Extend Sewers, $50,000	696
26.	Loan for Improvement of Streets and Extension of Sewers, $50,000	699
27.	Loan to Improve Park Lands, $10,000	701
28.	Loan for New Water System, $200,000	703
29.	Loan to Purchase and Improve Park Lands, $45,000	705
30.	Loan for Completion of New Water System, $800,000	707
31.	Loan to Improve Streets, Build Sewers, &c., $250,000	710
32.	Loan to Improve Public Parks, $10,000	713
33.	Loan to Improve Public Parks, $5,000	714
34.	Loan for Widening Tenth Street, $30,000	716
35.	Loan to Purchase Park Lands and Erect Bath Houses, $20,000	718
36.	Loan to Complete New Water System, $25,000	719
37.	Loan to Improve Streets, Build Sewers, &c., $75,000	722
38.	Loan to Improve Streets, Build Sewers, &c., $25,000	726
39.	Loan to Improve Streets, Build Sewers, &c., $250,000	729

Page

40. Loan to Purchase and Improve Park Lands, $25,000 732

41. Ratifying a Sale of Bonds for $100,000 to Complete a New Water System..... 733

42. Loan for Price's Run Sewer, $90,000 739

AN ORDINANCE authorizing a loan of one hundred and twenty-five thousand dollars for the construction of a new water reservoir, improving the water works of the city, and for other purposes.

* * * * * * * * * *

SEC. 3. The principal of said bonds shall be payable as follows, to wit; thirty-five hundred dollars on the first day of September, A. D. eighteen hundred and seventy-six, and a like sum of thirty-five hundred dollars on the first day of September in each and every year thereafter, until and including the first day of September, A. D. nineteen hundred and ten, and the remaining sum of twenty-five hundred dollars on the first day of September, A. D. nineteen hundred and eleven, and said bonds shall be issued in series according to the time when they shall severally be payable as aforesaid.

Final payment Sept. 1, 1911.

Sinking fund.

SEC. 4. For the payment and redemption of the principal of the debt which may be contracted under this ordinance, there shall be appropriated and applied in the year eighteen hundred and seventy-six, and in each year thereafter, until and including the year nineteen hundred and ten, the sum of thirty-five hundred dollars, and in the year nineteen hundred and eleven, the sum of twenty-five hundred dollars, according to the requirements of the aforesaid Act.

* * * * * * * * * *

Passed at City Hall, May 7, 1875.

AN ORDINANCE authorizing a loan of sixty thousand dollars for the purchase of water rights in the South Long Race.

* * * * * * * * * *

Form of bonds.

SEC. 2. The bonds which shall be issued under the provisions of this ordinance shall be in form heretofore used, and

shall be of the denomination of fifty dollars, and multiples of fifty dollars, and shall be divided into numbered series, and made payable, with any interest which may be due thereon, in manner following, to wit: No. 118, for seven thousand four hundred dollars, to fall due and become payable October 1st, A. D. 1913; No. 119, for thirty-two thousand seven hundred dollars, to fall due and become payable April 1st, A. D. 1914; No. 120, for nineteen thousand nine hundred dollars, to fall due and become payable October 1st, A. D. 1914. The rate of interest on the bonds or certificates of indebtedness issued under this ordinance shall not exceed five (5) per cent.

Principal payable Oct. 1, 1913, $7,400.

April 1, 1914, $32,700.

Oct. 1, 1914, $19,900.

Interest.

Sec. 3. The Council of Wilmington shall, in making its annual appropriations for any of the fiscal years, in which any of the above series of bonds shall fall due, include in said appropriations a sum of money sufficient for the redemption of the same, and any interest that may be due.

Appropriation for payment of bonds.

Passed at City Hall, April 26, 1883.

AN ORDINANCE providing for a loan of sixty thousand dollars for the benefit of the Board of Water Commissioners.

Whereas, By Section 12 of the Act entitled "An Act to establish a Board of Water Commissioners for the City of Wilmington, and for other purposes," passed at Dover, April 18th, 1883, it is provided that, for the purpose of defraying all the costs of acquiring real estate for reservoirs, laying pipe, purchasing and establishing engines, constructing all the works contemplated by this Act, and purchasing water rights, the City of Wilmington, upon the requisition of the said Board of Water Commissioners, shall issue bonds each for the sum of one hundred dollars, or multiples of one hundred, payable in not more than thirty-five years, to be denominated "Wilmington City Bonds," in an amount not exceeding one hundred and twenty thousand dollars, bearing interest not exceeding five and one-half per cent. per annum, and

Preamble.

Whereas, The Board of Water Commissioners, on the 25th day of November, A. D. 1885, issued their requisition

directed to this Council, setting forth that they had contracted for a new pump of ten million gallons capacity per day, to be placed at the Brandywine Station, and requesting the Council to pass an ordinance providing for the issuing to them of the bonds of the City of Wilmington, of the amount of sixty thousand dollars as the necessities of the board may require, in accordance with Section 12 of the Act of the General Assembly aforesaid, which said requisition was presented and filed in Council on the 27th day of November, A. D. 1885; now, therefore,

BE IT ORDAINED, by the Council of Wilmington.

Bonds to amount of $60,000 to be issued.

SECTION 1. That immediately after the passage of this ordinance there shall be issued in the name of The Mayor and Council of Wilmington bonds to the amount of sixty thousand dollars, such bonds shall be issued each of one hundred dollars, or multiples of one hundred dollars, and shall fall due and be made payable in the manner following, to wit: Thirteen thousand seven hundred dollars on the first day of October, A. D. 1914; thirty-four thousand seven hundred dollars on the first day of April, A. D. 1915; and eleven thousand six hundred dollars on the first day of October, A. D. 1915. Such bonds shall be denominated "Wilmington City Bonds" and shall bear interest at the rate of three and a half per cent. per annum, payable semi-annually on the first days of April and October in each and every year after date of issue. The bonds issued under the provisions of this ordinance shall be signed by the Mayor and countersigned by the Treasurer and City Auditor in the same manner as other city bonds, and the record thereof shall be made and kept by the City Auditor and Treasurer respectively.

When payable.

Interest.

How signed.

Water Commissioners to sell bonds.

SEC. 2. The Board of Water Commissioners may sell and dispose of the bonds hereby authorized to be issued on the most advantageous terms possible but no commission or other compensation shall be charged or paid to any member of said Board for effecting the sale, or negotiating the sale of said bonds. The proceeds of the sale of said bonds shall be received by said Board of Water Commissioners and placed on deposit in such bank at Wilmington as shall from time to time be the

Deposit of proceeds.

depository of the funds of the City, to the credit of the said Board and all moneys to be disbursed therefrom shall be drawn upon warrants signed by the President of said Board and countersigned by the City Treasurer and City Auditor. Warrants.

Passed at City Hall, May 6, 1886.

AN ORDINANCE to provide for the borrowing of one hundred and fifty thousand dollars for park purposes. Loan for park purposes.

WHEREAS, By an Act of the General Assembly of the State of Delaware, passed at Dover, March 13th, A. D. 1883, it was among other things provided that William P. Bancroft, George H. Bates, Thomas F. Bayard, Edward Betts, Francis N. Buck, George W. Bush, William M. Canby, Joseph L. Carpenter, Jr., Henry A. DuPont, J. Taylor Gause, and their successors who should be appointed as in said Act provided, together with the Mayor of the City of Wilmington, the President and the Chairman of the Finance Committee of the City Council, and the Chief Engineer of the Surveying Department of said city for the time being, were thereby created and constituted a Board of Park Commissioners, and provision was further made in said Act for the organization of said Board, on or before the first day of January, A. D. 1884, and the classification of the first ten commissioners above named, which said organization and classification of members was perfected, as by said Act was required to be done. And, Preamble.

WHEREAS, By a further Act of the General Assembly of the State of Delaware, passed at Dover, April 10th, A. D. 1885, as a supplement to said last mentioned Act, it was provided that in addition to the powers conferred by the Act to which this is a supplement, The Mayor and Council of Wilmington upon the recommendation of the two-thirds of the Board of Park Commissioners are hereby authorized to borrow upon bonds, such sum or sums, and upon such terms as the City Council may from time to time deem expedient, not to exceed in the aggregate the sum of one hundred and fifty thousand dollars, ($150,000) to be used in the purchase or acquisition, in the manner authorized by the Act which this is a Preamble.

supplement of, land for a park or parks for the benefit of the citizens of Wilmington and its vicinity. And,

Preamble.

WHEREAS, At a meeting of the Board of Park Commissioners held December 22nd, 1885, the following resolution was adopted by the unanimous vote of all the members present, being more than two-thirds of the Board, viz: Calvin B. Rhoads, Mayor of the City of Wilmington; William P. Bancroft, William M. Canby, Jos. L. Carpenter, Jr., Francis N. Buck, George W. Bush, William Canby, J. Taylor Gause, John C. Farra, President of the City Council; Dennis J. Menton, Chairman of the Finance Committee, and Frederick H. Robinson, Chief Engineer of the Surveying Department, which said resolution was as follows:

Preamble.

Resolved, That the Board of Park Commissioners do hereby recommend to the Mayor and Council of Wilmington, to borrow upon the bonds of the city, one hundred and fifty thousand dollars ($150,000), or so much thereof as may be necessary; the proceeds to be used for the purchase of lands for a public park or parks, as heretofore recommended by this Board, to the Mayor and Council, in accordance with the supplement to an Act entitled "An Act to provide Public Parks for the use of the Citizens of Wilmington and its vicinity," passed April 10th, 1885, a copy of which said resolution properly attested by the Secretary of said Board, has been presented to the Council and filed among the records thereof. Now

Therefore, In pursuance and by virtue of the powers conferred by the said Acts of the General Assembly in that behalf,

BE IT ORDAINED, by the Council of Wilmington.

Bonds to the amount of $150,000 to be issued.

SECTION 1. That from and immediately after the passage of this ordinance, there shall be issued in the name of The Mayor and Council of Wilmington, bonds to the amount of one hundred and fifty thousand dollars ($150,000). Such bonds shall be issued each of one hundred dollars ($100), or multiples of one hundred dollars, and shall fall due and be made payable in manner following, to wit: Twenty-four thou-

When payable.

sand two hundred dollars ($24,200) thereof on the first day of October, A. D. 1915; thirty-six thousand eight hundred dollars ($36,800) on the first day of April, A. D. 1916; thirty-seven thousand nine hundred dollar ($37,900) on the first day of October, A. D. 1916; thirty-nine thousand dollars ($39,000) on the first day of April, A. D. 1917, and twelve thousand one hundred dollars ($12,100) on the first day of October, A. D. 1917. Such bonds shall be denominated "Wilmington City Bonds," and shall bear interest at the rate of three and a half per cent. per annum, payable semi-annually, on the first days of April and October in each and every year after date of issue. The bonds issued under the provisions of this ordinance shall be signed by the Mayor and countersigned by the Treasurer and City Auditor, in the same manner as other city bonds, and the record thereof kept by the City Auditor and City Treasurer, respectively.

Interest.

How signed.

Finance Committee to sell bonds.

Proceeds, how to be deposited.

Warrants for purchase of land for park purposes.

SEC. 2. The Finance Committee of City Council are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance, to sell and dispose of the same, or any part hereof to the most advantage to the city, and the proceeds of such sale shall be received by the City Treasurer, and be by him made the subject of a special deposit in such bank at Wilmington as shall be the depository of the funds of the city, and shall only be drawn therefrom upon proper warrants of the Council, for the purchase or acquisition of lands for a public park or parks in the manner authorized by the Act of General Assembly in that regard, passed at Dover, March 13th, 1883, and the supplement thereto passed at Dover, April 10th, 1885, and for no other purpose.

Passed at City Hall, June 4, 1886.

AN ORDINANCE providing for a loan of forty-five thousand dollars for the benefit of the Board of Water Commissioners.

Preamble.

WHEREAS, By Section 12 of the Act entitled "An Act to establish a Board of Water Commissioners for the City of Wil-

mington and for other purposes," passed at Dover, April 18th, 1883, it is provided that for the purpose of defraying all the costs of acquiring real estate for reservoirs, laying pipes, purchasing and establishing engines, constructing all the works contemplated by this Act, and purchasing water rights, the City of Wilmington upon the requisition of the said Board of Water Commissioners, shall issue bonds, each for the sum of one hundred dollars or multiples of one hundred, payable in not more than thirty-five years, to be denominated "Wilmington City Bonds," in an amount not exceeding one hundred and twenty thousand dollars bearing interest not exceeding five and a half per cent. per annum. And,

Preamble.

WHEREAS, The Board of Water Commissioners on the second day of October, A. D. 1888, issued their requisition, directed to this Council, setting forth that they had contracted for the improvements of the water power, and extending the mains therefor, and requesting The Council to pass an ordinance, providing for the issuing to them of the bonds of the City of Wilmington of the amount of forty-five thousand dollars, as the necessities of the bond may require, in accordance with Section 12 of the Act of the General Assembly aforesaid, which said requisition was presented and filed in The Council on the fourth day of October, A. D. 1888. Now, therefore,

BE IT ORDAINED, by The Council of Wilmington.

Bonds to be issued for $45,000.

SECTION 1. That immediately after the passage of this ordinance, there shall be issued in the name of The Mayor and Council of Wilmington bonds to the amount of forty-five thousand dollars, such bonds shall be issued each of one hundred dollars or multiples of one hundred dollars, and shall fall due and be made payable in manner following, to wit: Nine thousand dollars on the first day of October, A. D. 1919; nine thousand dollars on the first day of October, A. D. 1920; nine thousand dollars on the first day of October, A. D. 1921; nine thousand dollars on the first day of October, A. D. 1922; and nine thousand dollars on the first day of October, A. D. 1923. Such bonds shall be denominated "Wilmington City Bonds," and shall bear interest at the rate of four (4) per cent. per annum,

When payable.

Interest.

payable semi-annually on the first days of April and October in each and every year after date of issue. The bonds issued under the provisions of this ordinance shall be signed by the Mayor and countersigned by the Treasurer and City Auditor in the same manner as other city bonds, and the record thereof shall be made and kept by the City Auditor and Treasurer respectively. How signed. Record.

SEC. 2. The Board of Water Commissioners may sell and dispose of the bonds hereby authorized to be issued on the most advantageous terms possible, but no commission or other compensation shall be charged or paid to any member of said board for effecting the sale, or negotiating the sale of said bonds. Water Commissioners to dispose of bonds.

The proceeds of the sale of said bonds shall be received by said Board of Water Commissioners and placed on deposit in such bank at Wilmington as shall from time to time be the depository of the funds of the city, to the credit of the said Board, and all moneys to be disbursed therefrom shall be drawn upon warrants signed by the President of said Board, and countersigned by the City Treasurer and City Auditor. Proceeds to be deposited, how. Warrants.

Passed at City Hall, October 25, 1888.

AN ORDINANCE to provide for the borrowing of one hundred thousand dollars for paving and improving the streets and avenues of the City of Wilmington.

WHEREAS, By an Act of the General Assembly of the State of Delaware, passed at Dover, May 15th, A. D. 1891, The Mayor and Council of Wilmington was authorized and empowered to borrow by an ordinance of The Council to be passed with the concurrence of two-thirds of all the members thereof for the time being, a sum or sums of money not exceeding in the aggregate five hundred thousand dollars, to be appropriated, applied and expended for paving and improving the streets and avenues of the City of Wilmington, and to issue bonds of the said TheMayor and Council of Wilmington for the payment thereof, with interest, at such times and in Preamble.

such manner as the said The Council shall by ordinance prescribe and appoint; and

Preamble. WHEREAS, It was further provided by said Act that any and all sums of money borrowed under the authority of said Act shall be borrowed by the said The Mayor and Council of Wilmington at such time and in such amounts as the Board of Directors of the Street and Sewer Department of the City of Wilmington may direct; *provided*, that in no event shall the amount to be borrowed under the provisions of said Act exceed the sum of two hundred thousand dollars in any one year; and

Preamble. WHEREAS, The said Board of Directors of the Street and Sewer Department, in conformity with the provisions of said Act, did on May 21st, A. D. 1891, request The Mayor and Council of Wilmington to provide by ordinance for the borrowing of one hundred thousand dollars for the year 1891, for paving and improving the streets and avenues of the said city, and to authorize the issuance of bonds of the said The Mayor and Council of Wilmington for payment of the sum of money so to be borrowed, a copy of which said request has been presented to The Council and filed among the records thereof; therefore, in pursuance and by virtue of the power and authority by the said Act of the General Assembly in that behalf,

BE IT ORDAINED, by The Council of Wilmington, two-thirds of all the members thereof concurring therein.

Bonds to be issued for $100,000. SECTION 1. That immediately after the passage of this ordinance there shall be issued in the name of The Mayor and Council of Wilmington, bonds to the amount of one hundred thousand dollars in the aggregate. Such bonds shall be issued each for the sum of fifty dollars, or multiples thereof, and shall fall due and be made payable in the manner following,

When payable. to wit: Twenty-eight thousand and one hundred dollars, part thereof, on the first day of October, A. D. 1917; forty-one thousand and four hundred dollars, part thereof, on the first day of April, A. D. 1918; and thirty thousand and five hundred dollars, the balance thereof, on the first day of October, A. D. 1918. Such bonds shall be denominated "Wilmington

City Bonds'' and shall bear interest at a rate not exceeding four and one-half per cent. per annum, payable semi-annually on the first day of April and October in each and every year after the date of the issue thereof; and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor, in the same manner as other city bonds, and the record thereof kept by the City Auditor and City Treasurer respectively.

Interest.

How signed.

Record.

Sec. 2. The Finance Committee of the Council are hereby authorized and directed, immediately after the issuance of the bonds provided for by this ordinance, to sell and dispose of the same to the highest and best bidder therefor, and to the best advantage to the city, and the proceeds of such sale shall be received by the Board of Directors of the Street and Sewer Department, and shall be placed upon special deposit to the credit of said department in such bank or trust company in the City of Wilmington as shall be determined by the said board. All orders or warrants for the payment of money to be drawn against said fund shall be signed by the President of said board and countersigned by the City Treasurer and City Auditor, and shall have specified thereon the words ''Paving and improving the streets and avenues.'' No warrant or order for the payment of money shall be drawn against said fund except it is for payment for work done in paving and improving the streets and avenues of the City of Wilmington.

Finance Committee to sell bonds.

Proceeds to be received by Street and Sewer Department.

Special deposit of fund.

Warrants on fund.

Fund to be spent for paving and improving streets.

Passed at City Hall, July 23, 1891.

AN ORDINANCE to provide for the borrowing of two hundred thousand dollars for paving and improving the streets and avenues of the City of Wilmington.

Whereas, By an Act of the General Assembly of the State of Delaware, passed at Dover, May 15th, A. D. 1891, The Mayor and Council of Wilmington was authorized and empowered to borrow, by an ordinance of the Council to be passed with the concurrence of two-third of all the members thereof for the time being, a sum or sums of money not exceeding in the aggregate five hundred thousand dollars, to be

Preamble.

appropriated, applied and expended for paving and improving the streets and avenues of the City of Wilmington, and to issue bonds of the said The Mayor and Council of Wilmington for the payment thereof, with interest, at such times and in such manner as the said The Council shall by ordinance prescribe and appoint; and

Preamble.

WHEREAS, It is further provided by said Act that any and all sums of money borrowed under the authority of said Act shall be borrowed by the said The Mayor and Council of Wilmington at such time and in such amounts as the Board of Directors of the Street and Sewer Department of the City of Wilmington may direct; *provided*, that in no event shall the amount to be borrowed under the provisions of said Act exceed the sum of two hundred thousand dollars in any one year; and

Preamble.

WHEREAS, The said Board of Directors of the Street and Sewer Department, in conformity with the provisions of said Act, did on February 10th, A. D. 1892, request The Mayor and Council of Wilmington to provide by ordinance for the borrowing of two hundred thousand dollars for the year 1892 for paving and improving the streets and avenues of the said city, and to authorize the issuance of bonds of the said The Mayor and Council of Wilmington for payment of the sum of money so to be borrowed, a copy of which said request has been presented to the Council and filed among the records thereof; therefore, in pursuance and by virtue of the power and authority by the said Act of the General Assembly in that behalf,

BE IT ORDAINED, by The Council of Wilmington, two-thirds of all the members thereof concurring therein.

Bonds for $200,000 to be issued.

SECTION 1. That immediately after the passage of this ordinance there shall be issued in the name of The Mayor and Council of Wilmington, bonds to the amount of two hundred thousand dollars in the aggregate. Such bonds shall be issued each for the sum of fifty dollars, or multiples thereof, and shall fall due and be made payable in the manner following,

to wit: Twelve thousand one hundred and fifty dollars, part thereof, on the first day of October, A. D. 1918; forty-three thousand nine hundred dollars, part thereof, on the first day of April, A. D. 1919; forty-five thousand two hundred and fifty dollars, part thereof, on October 1st, A. D. 1919; forty-six thousand six hundred dollars, part thereof, on April 1st, A. D. 1920; forty-eight thousand and fifty dollars, part thereof, on October 1st, A. D. 1920; four thousand and fifty dollars, part thereof, on April 1st, A. D. 1921. Such bonds shall be denominated "Wilmington City Bonds" and shall bear interest at four (4) per cent. per annum, payable semi-annually on the first day of April and October in each and every year after the date of the issue thereof, and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other city bonds, and the record thereof kept by the City Auditor and City Treasurer respectively.

When payable.

Interest.

How signed.

Record.

SEC. 2. The Finance Committee of the Council are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance, to sell and dispose of the same to the highest and best bidder therefor, and to the best advantage to the city, and the proceeds of such sale shall be received by the Board of Directors of the Street and Sewer Department, and shall be placed upon special deposit to the credit of said department in such bank or trust company in the City of Wilmington as shall be determined by the said board. All orders or warrants for the payment of money to be drawn against said fund shall be signed by the President of said board and countersigned by the City Treasurer and City Auditor, and shall have specified thereon the words "Paving and improving the streets and avenues." No warrant or order for the payment of money shall be drawn against said fund except it is for payment for work done in paving and improving the streets and avenues of the City of Wilmington.

Finance Committee to sell bonds.

Proceeds to be received by the Street and Sewer Department.

Special fund.

Warrants.

Fund to be used for paving and improving streets.

Passed at City Hall, March 17, 1892.

AN ORDINANCE to provide for the borrowing of two hundred thousand dollars for paving and improving the streets and avenues of the City of Wilmington.

Preamble. WHEREAS, By an Act of the General Assembly of the State of Delaware, passed at Dover, May 15th, A. D. 1891, The Mayor and Council of Wilmington was authorized and empowered to borrow, by an ordinance of the Council to be passed with the concurrence of two-thirds of all the members thereof for the time being, a sum or sums of money not exceeding in the aggregate five hundred thousand dollars, to be appropriated, applied and expended for paving and improving the streets and avenues of the City of Wilmington, and to issue bonds of the said The Mayor and Council of Wilmington for the payment thereof, with interest, at such times and in such manner as the said the Council shall by ordinance prescribe and appoint; and

Preamble. WHEREAS, It was further provided by said Act that any and all sums of money borrowed under the authority of said Act shall be borrowed by the said The Mayor and Council of Wilmington at such time, and in such amounts, as the Board of Directors of the Street and Sewer Department of the City of Wilmington may direct; *provided* that in no event shall the amount to be borrowed under the provisions of said Act exceed the sum of two hundred thousand dollars in any one year; and

Preamble. WHEREAS, The said Board of Directors of the Street and Sewer Department, in conformity with the provisions of said Act, did on February 15th, 1893, request The Mayor and Council of Wilmington to provide by ordinance for the borrowing of two hundred thousand dollars for the year 1893 for paving and improving the streets and avenues of the said city, and to authorize the issuance of bonds of the said The Mayor and Council of Wilmington for payment of the sum of money so to be borrowed, a copy of which said request has been presented to the Council and filed among the records thereof; and

WHEREAS, The aggregate amount of money heretofore borrowed as authorized by said Act is the sum of three hundred thousand dollars; Preamble.

Therefore, In pursuance and by virtue of the power and authority by the said Act of the General Assembly in that behalf,

BE IT ORDAINED, by The Council of Wilmington, two-thirds of all the members thereof concurring herein.

SECTION 1. That there shall be issued in the name of The Mayor and Council of Wilmington bonds to the amount of two hundred thousand dollars in the aggregate, on the days and in amounts following, to wit: Immediately after the passage of this ordinance there shall be issued bonds to the amount of seventy-five thousand dollars; on the first day of October, A. D. 1893, there shall be issued bonds to the amount of seventy-five thousand dollars; and on the first day of April, A. D. 1894, there shall be issued bonds to the amount of fifty thousand dollars. Such bonds shall be issued each for the sum of fifty dollars, or multiples thereof; and shall fall due and be made payable in the manner following, to wit: Forty-five thousand and four hundred dollars, part thereof, on the first day of April, A. D. nineteen hundred and twenty-one; fifty thousand nine hundred and fifty dollars, part thereof, on the first day of October, A. D. nineteen hundred and twenty-one; fifty-two thousand and five hundred dollars, part thereof, on the first day of April, A. D. nineteen hundred and twenty-two; and fifty-one thousand one hundred and fifty dollars, the balance thereof, on the first day of October, A. D. nineteen hundred and twenty-two. Such bonds shall be denominated "Wilmington City Bonds," and shall bear interest from the date of the issue thereof, at the rate of four [and one-half] per cent. per annum, payable semi-annually on the first day of April and October in each and every year after the date of the issue thereof; and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other city bonds, and the record thereof kept by the City Auditor and City Treasurer respectively.

$200,000 to be borrowed.

Bonds when when issued.

When payable.

Interest.

Amendment, June 15, 1893.

How signed.

Bonds, when sold.

SEC. 2. The Finance Committee of the Council are hereby authorized and directed immediately after the passage of this ordinance, to sell and dispose of all of the bonds mentioned in the first section to the highest and best bidder therefor, and to the best advantage to the city, which said bonds shall be issued, delivered and paid for at the times and in the amounts mentioned in the first section hereof; and the proceeds of such sales shall be received by the Board of Directors of the Street and Sewer Department, and shall be placed upon special deposit to the credit of said department in such bank or trust company in the City of Wilmington as shall be determined by the said board. All orders or warrants for the payment of money to be drawn against said fund shall be signed by the President of said board and countersigned by the City Treasurer and City Auditor, and shall have specified thereon the words "Paving and improving the streets and avenues." No warrant or order for the payment of money shall be drawn against said fund except it be for payment for work done in paving and improving the streets and avenues of the City of Wilmington.

Proceeds deposited as a fund.

Warrants on fund.

Expenditure of fund.

Passed at City Hall, May 11, 1893.

AN ORDINANCE to authorize the issuance of certain bonds or certificates of Indebtedness and to provide for the payment thereof.

WHEREAS, The "The Mayor and Council of Wilmington," was authorized and empowered by an act of the General Assembly, passed at Dover, March 20th, A. D. eighteen hundred and seventy-seven, to borrow under an ordinance of the City Council, to be passed with a concurrence of two-thirds of all the members thereof, for the time being, at any time thereafter, a sum or sums of money, not exceeding in the aggregate two hundred thousand dollars, to be paid at such time or times and in such manner as the ordinance should prescribe,

Act of General Assembly.

AND WHEREAS, The Council in conformity with the provisions of said Act of Assembly by ordinance passed on February 6, A. D. eighteen hundred and seventy-nine, authorized a

loan to be made of twenty-four thousand dollars ($24,000.00), and bonds or certificates of indebtedness to be issued for that amount, payable on the first day of September, A. D. eighteen hundred and ninety-nine, but did not prescribe the manner in which said bonds should be paid;

And Whereas, Said loans were made and said bonds or certificates of indebtedness were issued to the amount of twenty-four thousand dollars ($24,000.00) payable on the first day of September, A. D. eighteen hundred and ninety-nine, but there is not now in the treasury of the City, funds applicable to the payment of said bonds at their maturity, and the payment thereof must be provided for by the issue and sale of new bonds to the said amount of twenty-four thousand dollars ($24,000.00); full authority for the issue and sale of said new bonds having been given by an Act of the General Assembly, entitled "An Act to further confirm and establish an Act entitled an Act to provide a Sinking Fund for the payment of the City Debt of Wilmington," passed at Dover, January 10, A. D. eighteen hundred and ninety-seven; therefore,

Be it ordained, by the Council of Wilmington.

Section 1. That the Finance Committee of the Council and the Commissioners of the Sinking Fund are hereby authorized and directed to cause to be issued in the name of the "The Mayor and Council of Wilmington," bonds or certificates of indebtedness to the amount of twenty-four thousand dollars ($24,000), for the payment of which the credit of the said the "The Mayor and Council of Wilmington," is hereby pledged, and the said Finance Committee and the Commissioners of the Sinking Fund are further hereby authorized to dispose of said bonds or certificates of indebtedness in the usual manner, the proceeds thereof to be paid to the City Treasurer, and such proceeds by said City Treasurer applied to the redemption of said bonds, aggregating the sum of twenty-four thousand dollars ($24,000), payable on the first day of September, A. D. eighteen hundred and ninety-nine.

Authority to issue bonds.

Amount of.

Proceeds of.

Interest.

Rate of.

SEC. 2. The bonds or certificates of indebtedness authorized to be issued under this ordinance, shall be in the form now used for like purposes, and shall bear interest at a rate not exceeding four per centum per annum, payable semi-annually on the first day of April and the first day of October in each year, clear of all taxes which may be levied upon the principal or interest thereof, by authority of any law of this State or the United States.

When payable.

SEC. 3. The said bonds or certificates of indebtedness authorized under this ordinance and amounting to the sum of twenty-four thousand dollars ($24,000) shall fall due and become payable on the first day of October, A. D. nineteen hundred and thirteen, and shall form part of the series No. 118 of the Sinking Fund.

Passed at the City Hall, August 10, 1899.

AN ORDINANCE to authorize the issuance of certain Sinking Fund Bonds or Certificates of Indebtedness.

PREAMBLE.

WHEREAS, There are now certain bonds of the City of Wilmington to the aggregate amount of thirty thousand dollars, which will fall due on the first day of January, A. D. 1894, payment of which must be made out of the proceeds of sale of Sinking Fund Bonds or Certificates of Indebtedness, to be issued according to the terms and provisions of an Act of the General Assembly of the State of Delaware, entitled "An Act to provide a Sinking Fund for the payment of the Bonds of the City of Wilmington," passed at Dover, on February 9th, A. D. 1855, and the various amendments and supplements thereto.

AND WHEREAS, The Finance Committee of the Council and the Sinking Fund Commissioners appointed under the provisions of the act aforesaid, have under the powers conferred upon them by the said Act, and the various amendments and supplements thereto, ordered to be issued new bonds or certificates of indebtedness of the said City of Wilmington, from the proceeds of the sale of which provision is to be made

for the payment of said bonds so falling due as aforesaid; therefore,

BE IT ORDAINED, by the Council of Wilmington.

SECTION 1. That the Finance Committee of the Council and the Sinking Fund Commissioners are hereby authorized and directed to cause to be issued in the name of the Mayor and Council of Wilmington, bonds or certificates of indebtedness to the amount of thirty thousand dollars in the aggregate, which said bonds or certificates shall be denominated Sinking Fund Loan, and the credit of the said the Mayor and Council of Wilmington is hereby pledged for the payment of the same. Authorized to issue bonds to the amount of $30,000.

SEC. 2. Said bonds or certificates of indebtedness shall be made similar in form to other Sinking Fund bonds or certificates of indebtedness and shall bear interest at the rate of four and one-half per cent. per annum, payable semi-annually on the first day of January and July in each and every year until said bonds or certificates of indebtedness shall be paid, and shall fall due and be made payable in the manner following, to wit: One or more of said bonds or certificates for the aggregate sum of twenty-eight hundred dollars, on the first day of April, A. D. 1909; one or more of said bonds or certificates for the aggregate sum of twenty-five thousand and fifty dollars, on the first day of October, A. D. 1909; one or more of said bonds or certificates of indebtedness to the aggregate amount of two thousand one hundred and fifty dollars, on the first day of April, A. D. 1910. Bonds to bear interest at rate of 4 1-2 per cent.

SEC. 3. The said bonds or certificates of indebtedness shall be disposed of by the said Finance Committee of the Council and the Sinking Fund Commissioners, agreeably to the directions of the Council, and the proceeds thereof shall be paid to the City Treasurer of the City of Wilmington, and such proceeds shall be applied to the redemption of the following loan of said city, to wit: Loan No. 24, on the books of the Treasurer of said city, for the sum of thirty thousand dollars. Proceeds to be applied to redemption of Loan No. 24.

Passed at the City Hall, December 21, 1893.

AN ORDINANCE to authorize the issuance of certain Sinking Fund Bonds or Certificates of Indebtedness.

WHEREAS, There are now certain bonds of the City of Wilmington to the aggregate amount of twenty thousand dollars which will fall due on the first day of July, A. D. 1894, payment of which must be made out of the proceeds of sale of Sinking Fund Bonds or Certificates of Indebtedness to be issued according to the terms and provisions of an Act of the General Assembly of the State of Delaware, entitled "An Act to provide a Sinking Fund for the payment of the bonds of the City of Wilmington," passed at Dover on February 9, A. D. 1855, and the various amendments and supplements thereto.

AND WHEREAS, The Finance Committee of the Council and the Sinking Fund Commissioners appointed under the provisions of the Act aforesaid, have under the powers conferred upon them by the said Act and the various amendments and supplements thereto ordered to be issued new bonds or certificates of indebtedness of the said City of Wilmington from the proceeds of the sale of which provision is to be made for the payment of said bonds so falling due as aforesaid; therefore

BE IT ORDAINED, by the Mayor and Council of Wilmington.

SECTION 1. That the Finance Committee of the Council and the Sinking Fund Commissioners are hereby authorized and directed to cause to be issued in the name of the Mayor and Council of Wilmington, bonds or certificates of indebtedness to the amount of twenty thousand dollars in the aggregate, which said bonds or certificates of indebtedness shall be denominated "Sinking Fund Loan," and the credit of the said the Mayor and Council of Wilmington is hereby pledged for the payment of the same.

Issue bonds to the amount of $20,000.

SEC. 2. Said bonds or certificates of indebtedness shall be made similar in form to other Sinking Fund Bonds or Certificates of Indebtedness and shall bear interest at the rate of four per centum per annum, payable semi-annually on the first day of January and July in each and every year until said bonds or certificates of indebtedness shall be paid and shall fall due

Shall bear interest at the rate of 4 per cent.

and be made payable, with any interest that may be due thereon, on the first day of April, A. D. 1910.

SEC. 3. The said bonds or certificates of indebtedness shall be disposed of by the said Finance Committee of the Council and the Sinking Fund Commissioners agreeably to the directions of the Council, and the proceeds thereof shall be paid to the City Treasurer of the City of Wilmington, and such proceeds shall be applied to the redemption of bonds of said city, being Loan No. 23, on the books of the Treasurer of said city for the sum of twenty thousand dollars.

Proceeds shall be applied to the redemption of Loan No. 23.

Passed at the City Hall, June 21, 1894.

AN ORDINANCE to provide for the borrowing of one hundred and twenty-five thousand dollars for the opening, widening, paving and improvement of streets, avenues, lanes or alleys in the City of Wilmington and for the construction of Sewers and Water-ways in said City.

WHEREAS, By an Act of the General Assembly of the State of Delaware, passed at Dover, April 30, 1895, the Mayor and Council of Wilmington was authorized and directed to borrow, by an ordinance of the Council, the sum of two hundred and fifty thousand dollars, and to issue bonds of said city for the payment thereof with interest, said payment to be made at such time and in such manner as the City Council of the said City of Wilmington shall by ordinance prescribe and appoint, and the said sum of two hundred and fifty thousand dollars shall, at the discretion of the Board of Directors of the Street and Sewer Department of the said City of Wilmington, be appropriated, applied and expended by the said Board for the following public improvements, that is to say: For the opening, widening, paving and improvement of streets, avenues, lanes or alleys in said City of Wilmington, and for the construction of sewers and water-ways in said city, and

WHEREAS, It was further provided by said Act, that any and all moneys so borrowed under the authority of said Act, shall be borrowed by the said the Mayor and Council of Wil-

mington, at such times and in such amounts as the Board of Directors of the Street and Sewer Department of the City of Wilmington may direct; *provided*, that in no event shall the amount to be borrowed under the provisions of said Act exceed the sum of one hundred and twenty-five thousand dollars in any one year; and,

WHEREAS, The said Board of Directors of the Street and Sewer Department, in conformity with the provisions of said Act, did on the 10th day of May, 1895, request the Mayor and Council of Wilmington to provide by ordinance for the borrowing of one hundred and twenty-five thousand dollars for the year 1895, for the opening, widening, paving and improvement of streets, avenue, lanes or alleys in the said city, and for the construction of sewers and water-ways in said city, and to authorize the issuance of bonds of the said the Mayor and Council of Wilmington for payment of the sum of moneys so to be borrowed, a copy of which said request has been presented to the Council and filed among the records thereof;

THEREFORE, In pursuance and by virtue of the power and authority by the said Act of the General Assembly in that behalf,

BE IT ORDAINED, by the Council of Wilmington.

Shall be issued, bonds to the amount of $125,000.

SECTION 1. That immediately after the passage of this ordinance, there shall be issued in the name of the Mayor and Council of Wilmington, bonds to the amount of one hundred and twenty-five thousand dollars in the aggregate.

Bonds, each shall be for $50 or multiples thereof.

Such bonds shall be issued each for the sum of fifty dollars, or multiples thereof, and shall fall due and be made payable in the manner following, to wit: Two thousand nine hundred dollars, part thereof, on the first day of October, A. D. 1922; fifty-five thousand six hundred and fifty dollars, part thereof, on the first day of April, A. D. 1923; fifty-seven thousand three hundred dollars, part thereof, on the first day of October, A. D. 1923, nine thousand one hundred and fifty dollars, part thereof, on the first day of April, A. D. 1924.

Such bonds shall be denominated Wilmington City Bonds, and shall bear interest at four per cent. per annum, payable semi-annually, on the first day of April and October in each and every year after the date of the issue thereof, and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other city bonds, and the record thereof kept by the City Auditor and City Treasurer respectively.

Shall bear interest at the rate of 4 per cent.

SEC. 2. The Finance Committee of the Council are hereby authorized and directed immediately after the passage of this ordinance to sell and dispose of all of the bonds mentioned in the first section to the highest and best bidder therefor, and to the best advantage to the city, and the proceeds of such sale shall be received by the Board of Directors of the Street and Sewer Department, and shall be placed upon special deposit to the credit of said department in such bank or trust company in the City of Wilmington as shall be determined by the said Board. All orders or warrants for the payment of money to be drawn against said fund shall be signed by the President of the said Board, and countersigned by the City Treasurer and City Auditor and shall have specified thereon whether the order or warrant is for the opening, widening, paving or improving of streets, or for the construction of sewers or water-ways.

Proceeds of sale shall be placed upon special deposit to the credit of the Street and Sewer Department.

No warrant or order for the payment of money shall be drawn against said fund except it is for payment for work done, or money expended in the opening, widening, paving and improvement of streets, avenues, lanes or alleys in the City of Wilmington, and for the construction of sewers and water-ways in said city.

No order shall be drawn against said fund except for opening or widening streets.

Passed at the City Hall, May 23, 1895.

AN ORDINANCE to provide for the borrowing of a sum of money to be used in the purchase of Park Lands.

WHEREAS, The General Assembly of the State of Delaware did, on April 27, A. D. 1895, pass an Act entitled "A further supplement to an Act to provide for Public Parks for

the use of the citizens of Wilmington and its vicinity," passed at Dover, March 13, 1883, wherein it was provided that the Mayor and Council of Wilmington were empowered, under an ordinance or ordinances of the City Council to be passed with the concurrence of two-thirds of all the members thereof, to borrow a sum or sums not exceeding in the aggregate fifty thousand dollars, to be applied and expended under the charge of the Board of Park Commissioners of the said city in the purchase or acquisition, in the manner authorized by the act to which this act is a supplement, of lands to be used as additions to said parks, and

WHEREAS, At a meeting of the Board of Park Commissioners held June 4, 1895, a resolution was adopted by a majority of all the members of the Board recommending to the Mayor and Council of Wilmington the purchase of certain lands for park purposes, a copy of which resolution, attested by the Secretary of said Board, has been presented to the Council and filed among the records, thereof, now,

THEREFORE, In pursuance and by virtue of the powers conferred by the said Act of the General Assembly in that behalf,

BE IT ORDAINED, by the Council of Wilmington.

Issue bonds to the amount of $50,000.

SECTION 1. That from and immediately after the passage of this ordinance, there shall be issued in the name of the Mayor and Council of Wilmington, bonds to the amount of fifty thousand dollars ($50,000). Such bonds shall be issued each of one hundred dollars, or the multiples of one hundred dollars, and shall fall due and be made payable in manner following, to wit: One or more of said bonds or certificates for the aggregate sum of forty-nine thousand nine hundred dollars on the first day of April, A. D. 1924; and one or more of said bonds or certificates of indebtedness for the aggregate sum of one hundred dollars on the first day of October, A. D. 1924. Such bonds shall be denominated "Wilmington City Bonds," and shall bear interest at the rate of four per cent. per annum, payable semi-annually, on the first day of April and October in each and every year after the date of issue. The bonds is-

sued under the provisions of this ordinance shall be signed by the Mayor and countersigned by the Treasurer and City Auditor, in the same manner as other city bonds, and the record thereof kept by the City Auditor and City Treasurer respectively.

SEC. 2. The Finance Committee of the Council are hereby authorized and directed, after the passage of this ordinance, to sell and dispose of all of the bonds mentioned in the first section to the highest and best bidder therefor, and to the best advantage to the city, and the proceeds of such sale shall be received by the City Treasurer, and be by him made the subject of a special deposit in such bank at Wilmington as shall be the depository of the funds of the city, and shall only be drawn therefrom upon the proper warrants of the Council, for the purchase or acquisition of lands for a public park or parks in the manner authorized by the acts of the General Assembly and the supplements thereto, and for no other purpose.

To dispose of the bonds to the highest and best bidder.

Passed at City Hall, June 27, 1895.

AN ORDINANCE to Provide for the borrowing of One Hundred and Twenty-five Thousand Dollars for the Opening, Widening, Paving and Improvement of Streets, Avenues, Lanes or Alleys in the City of Wilmington and for the Construction of Sewers and Waterways in Said City.

WHEREAS, By an Act of the General Assembly of the State of Delaware, passed at Dover, April 30th, 1895, the Mayor and Council of Wilmington was authorized and directed to borrow, by an ordinance of the Council, the sum of Two Hundred and Fifty Thousand Dollars, and to issue bonds of said City for the payment thereof with interest; said payment to be made at such time and in such manner as the City Council of said City of Wilmington shall by ordinance prescribe and appoint, and the said sum of Two Hundred and Fifty Thousand Dollars shall, at the discretion of the Board of Directors of the Street and Sewer Department of the said City of Wilmington, be appropriated, applied and expended by the said Board for the following public improvements, that is to

Act of General Assembly.

say: For the opening, widening, paving and improvement of streets, avenues, lanes or alleys in said City of Wilmington, and for the construction of sewers and water-ways in said city; and,

To borrow by direction of Street and Sewer Department.

WHEREAS, It was further provided by said Act, that any and all moneys so borrowed under the authority of said Act, shall be borrowed by the said the Mayor and Council of Wilmington, at such time and in such amounts as the Board of Directors of the Street and Sewer Department of the City of Wilmington may direct; provided, that in no event shall the amount to be borrowed under the provisions of said Act exceed the sum of One Hundred and Twenty-five Thousand Dollars in any one year; and,

WHEREAS, The said Board of Directors of the Street and Sewer Department, in conformity with the provisions of said Act, did on the 4th day of February, 1896, request the Mayor and Council of Wilmington to provide by ordinance for the borrowing of One Hundred and Twenty-five Thousand Dollars for the year Eighteen Hundred and Ninety-six for the opening, widening, paving and improvement of streets, avenues, lanes or alleys in the said City, and for the construction of sewers and water-ways in said City, and to authorize the issuance of bonds of the said the Mayor and Council of Wilmington for the payment of the sum of moneys so to be borrowed, a copy of which said request has been presented to the Council and filed among the records thereof;

THEREFORE, In pursuance and by virtue of the power and authority by the said Act of the General Assembly in that behalf.

BE IT ORDAINED, By the Council of Wilmington.

How issued.

SECTION 1. That immediately after the passage of this ordinance, there shall be issued in the name of the Mayor and Council of Wilmington, bonds to the amount of One Hundred and Twenty-five Thousand Dollars in the aggregate.

Such bonds shall be issued each for the sum of Fifty Dollars, or multiples thereof, and shall fall due and be made payable in the manner following, to wit: Sixty Thousand, Seven Hundred Dollars, part thereof, on the first day of October, A. D. 1924; Sixty-two Thousand Six Hundred and Fifty Dollars, part thereof, on the first day of April, A. D. 1925; One Thousand and Six Hundred and Fifty Dollars, part thereof, on the first day of October, A. D. 1925. How payable.

Such bonds shall be denominated Wilmington City Bonds, and shall bear interest at four per cent, per annum, payable semi-annually, on the first day of April and October in each and every year after the date of the issue thereof, and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other City bonds, and the record thereof kept by the City Auditor and City Treasurer respectively. Rate of interest and how paid. How signed.

SEC. 2. The Finance Committee of the Council are hereby authorized and directed immediately after the passage of this ordinance to sell and dispose of all of the bonds mentioned in the first section to the highest and best bidder therefor, and to the best advantage to the City, and the proceeds of such sale shall be received by the Board of Directors of the Street and Sewer Department, and shall be placed upon special deposit to the credit of said Department in such bank or trust company in the City of Wilmington as shall be determined by the said Board. All orders or warrants for the payment of money to be drawn against said fund shall be signed by the President of the said Board, and countersigned by the City Treasurer and City Auditor, and shall have specified thereon whether the order or warrant is for the opening, widening, paving or improving of streets, or for the construction of sewers or water-ways. How dispose of. Proceeds of sale. Orders drawn shall specify.

No warrant or order for the payment of money shall be drawn against said fund except it is for the payment for work done, or money expended in the opening, widening, paving and improvement of streets, avenues, lanes or alleys in the

City of Wilmington, and for the construction of sewers and water-ways in said City.

Passed at the City Hall, February 20, 1896.

AN ORDINANCE to Authorize the Issuance of Certain Bonds or Certificates of Indebtedness and to Provide for the Payment Thereof.

Act of General Assembly.

WHEREAS, the "The Mayor and Council of Wilmington," was authorized and empowered by an Act of the General Assembly, passed at Dover, March 20th, 1877, to borrow under an ordinance of the City Council, to be passed with a concurrence of two-thirds of all the members thereof, for the time being, at any time thereafter, a sum or sums of money, not exceeding in the aggregate, Two Hundred Thousand Dollars, to be paid at such time or times, and in such manner as the Ordinance should prescribe;

Ordinance authorizing loan.

Amount of.

AND WHEREAS, The Council, in conformity with the provisions of said Act of Assembly, by ordinance passed on May 24th, 1877, and August 16th, 1877, authorized loans to be made aggregating One Hundred and Seventy-six Thousand Dollars, ($176,000) and bonds or certificates of indebtedness to be issued for that amount, payable on the first day of February, A. D. Eighteen Hundred and Ninety-seven, but did not prescribe the manner in which said bonds should be paid;

AND WHEREAS, said loans were made and said bonds or certificates of indebtedness were issued to the aggregate amount of One Hundred and Seventy-six Thousand Dollars, payable on the said first day of February, A. D. Eighteen Hundred and Ninety-seven, but there is not now in the Treasury of the City, funds with which to pay said bonds at their maturity, and the payment thereof must be provided for by the issue and sale of new bonds to the said aggregate amount of One Hundred and Seventy-six Thousand Dollars; therefore

BE IT ORDAINED, By the Council of Wilmington.

SECTION 1. That the Finance Committee of the Council and the Sinking Fund Committee are hereby authorized and

directed to cause to be issued in the name of the "The Mayor and Council of Wilmington," bonds or certificates of indebtedness to the aggregate amount of One Hundred and Seventy-six Thousand Dollars, ($176,000) for the payment of which, the credit of the said the "Mayor and Council of Wilmington," is hereby pledged,—and the said Finance Committee and the Sinking Fund Committee are further hereby authorized to dispose of said bonds or certificates of indebtedness in the usual manner, the proceeds thereof to be paid to the City Treasurer, and such proceeds by said City Treasurer applied to the redemption of said bonds, aggregating the said sum of One Hundred and Seventy-six Thousand Dollars ($176,000) payable on the first day of February, A. D. Eighteen Hundred and Ninety-seven.

Authority to dispose of.

Proceeds of.

SEC. 2. The bonds or certificates of indebtedness authorized to be issued under this ordinance, shall be in the form now used for like purposes, and shall bear interest at a rate not exceeding four per centum per annum, payable semi-annually on the first day of April and the first day of October in each year, clear of all taxes which may be levied upon the principal or interest thereof, by authority of any law of this State or the United States.

Rate of interest.

When payable.

SEC. 3. The said bonds or certificates of indebtedness shall be issued in amounts to fall due and become payable with interest that may be due thereon in manner following: One or more of said bonds or certificates of indebtedness for the sum of Thirty-seven Hundred Dollars, ($3700) to fall due and become payable on April 1st, 1910; one or more of said bonds or certificates of indebtedness for the sum of Twenty-six Thousand Five Hundred and Fifty Dollars, to fall due and become payable on October 1st, 1910; one or more of said bonds or certificates of indebtedness for the sum of Twenty-seven Thousand Four Hundred Dollars, to fall due and become payable on April 1st, 1911; one or more of said bonds or certificates of indebtedness for the sum of Twenty-eight Thousand Two Hundred Dollars, to fall due and become payable on October 1st, 1911; one or more of said bonds or certificates of indebtedness for the sum of Twenty-nine Thousand and Fifty Dollars

Bonds to fall due.

to fall due and become payable on April 1st, 1912; one or more of said bonds or certificates of indebtedness for the sum of Twenty-nine Thousand Nine Hundred and Fifty Dollars, to fall due and become payable on October 1st, 1912; one or more of said bonds or certificates of indebtedness for the sum of Thirty Thousand Eight Hundred Dollars, to fall due and become payable on April 1st, 1913; and one or more of said bonds or certificates of indebtedness for the sum of Three Hundred and Fifty Dollars, to fall due and become payable on October 1st, 1913.

Passed at the City Hall, January 14, 1897.

AN ORDINANCE to Provide for the Borrowing of Twenty-five Thousand Dollars for the Improvement of the Public Parks.

Act of General Assembly.

WHEREAS, By an Act of the General Assembly of the State of Delaware, passed at Dover April 5, 1897, it was provided as follows, to wit:

SECTION 1. That the "Mayor and Council of Wilmington" are hereby empowered, under an ordinance or ordinances of the City Council, to be passed with the concurrence of two-thirds of all the members thereof to borrow a sum or sums not exceeding in the aggregate Twenty-five Thousand Dollars, ($25,000) to be applied under the charge of the Board of Park Commissioners in the improvement of the parks, but not more than Fifteen Thousand Dollars, ($15,000) shall be borrowed in any one calendar year.

To borrow $25,000 for improvement of public parks.

SEC. 2. That the bonds of the City of Wilmington authorized to be issued under the provisions of this Act, shall be issued, and payment made in the manner provided by an Act passed at Dover, February 9, 1855, entitled "An Act to provide a sinking fund for the City of Wilmington," and the various amendments and supplements thereto.

Therefore in pursuance, and by virtue of the powers conferred by the said Act of the General Assembly in that behalf.

BE IT ORDAINED, By the Council of Wilmington, (two-thirds of the members thereof concurring):

SECTION 1. That as soon as conveniently may be after the passage of this ordinance, the Finance Committee of the Council and the Commissioners of the Sinking Fund shall cause to be issued in the name of the "Mayor and Council of Wilmington," bonds to the amount of Fifteen Thousand Dollars ($15,000), and on the first day of April in the year Eighteen Hundred and Ninety-eight shall cause to be issued in the name of the "Mayor and Council of Wilmington" other bonds to the amount of Ten Thousand Dollars ($10,000), such bonds shall be issued each, for One Hundred Dollars ($100), or multiples of One Hundred Dollars ($100), and shall fall due and become payable on the first day of October, in the year of our Lord One Thousand Nine Hundred and Twenty-five. Said bonds shall be denominated "Wilmington City Bonds," and shall bear interest at the rate of four per centum per annum, payable semi-annually, on the first days of April and October in each and every year after date of issue. The bonds issued under the provisions of this ordinance, shall be signed by the Mayor and countersigned by the City Treasurer and the City Auditor, in the same manner as other City bonds, and the records thereof, kept by the City Auditor and City Treasurer respectively.

Who shall issue.

Amount of.

Other bonds to be issued for same purpose.

When payable.

Interest, rate of.

When payable.

SEC. 2. The Finance Committee of City Council and the Commissioners of the Sinking Fund, are hereby authorized and directed, prior to the issuance of the bonds provided for by this ordinance to offer said bonds for sale and to dispose of the same, or any part thereof, to the most advantage of the City, and the proceeds of such sale shall be received by the City Treasurer, and be by him made the subject of a special deposit in such bank at Wilmington as shall be the depository of the funds of the City, and shall only be drawn therefrom upon the proper warrants of the Council for the improvement of the Public Parks.

Proceeds of sale of.

For public parks.

Passed at the City Hall, May 6, 1897.

AN ORDINANCE to Provide for the Borrowing of Seventy-five Thousand Dollars for the Construction of the Silverbrook Sewer, the Elimination of Grade Crossings of Railroads, and the Improvements of the Streets and Avenues of the City of Wilmington.

Act of General Assembly.

WHEREAS, By an Act of the General Assembly of the State of Delaware passed at Dover, May 15th, A. D. 1897, the "The Mayor and Council of Wilmington," was authorized and empowered to borrow by an ordinance of the Council, the sum or sums of money not exceeding in the aggregate One Hundred and Twenty-five Thousand Dollars ($125,000), to be appropriated, applied and expended for the construction of the Silverbrook sewer, the elimination of grade crossings of railroads, and the improvement of streets and avenues of the City of Wilmington, and to issue bonds of the said the "The Mayor and Council of Wilmington," for the payment thereof with interest at such times and in such manner as the said Council by ordinance shall prescribe and appoint, and,

WHEREAS, It was further provided by said Act that any and all sums of money borrowed under the authority of said Act shall be borrowed by the said the "The Mayor and Council of Wilmington," at such time and in such amounts as the Board of Directors of the Street and Sewer Department of the City of Wilmington may direct; *Provided* that in no event shall the amount to be borrowed under the provisions of said Act exceed the sum of Seventy-five Thousand Dollars in any one year, and,

WHEREAS, The said Board of Directors of the Street and Sewer Department in conformity with the provisions of said Act, did on the 26th day of May, 1897, request the "The Mayor and Council of Wilmington," to provide by ordinance for the borrowing of Seventy-five Thousand Dollars ($75,000), for the year 1897, for the construction of the Silverbrook sewer, the elimination of grade crossings of railroads, and the improvement of the streets and avenues of the City of Wilmington, and to authorize the issuance of bonds of the said the "The Mayor and Council of Wilmington," for the payment of

the sum of money so to be borrowed and kept, of which said request has been presented to the Council and filed among the records thereof; therefore in pursuance and by virtue of the power and authority of the Act of the General Assembly in that behalf.

BE IT ORDAINED, By the Council of Wilmington.

SECTION 1. That immediately after the passage of this ordinance there shall be issued in the name of the "The Mayor and Council of Wilmington," bonds to the amount of Seventy-five Thousand Dollars ($75,000), in the aggregate. Such bonds shall be issued each for the sum of Fifty Dollars ($50), or multiples thereof, and shall fall due and be made payable in the manner following, to wit: Bonds to be issued. Amount of.

Thirty-seven Thousand Nine Hundred Dollars, part thereof, on the first day of October, One Thousand Nine Hundred and Twenty-five, and Thirty-seven Thousand One Hundred Dollars, balance thereof on the first day of April, One Thousand Nine Hundred and Twenty-six. Such bonds shall be denominated "Wilmington City Bonds," and shall bear interest at the rate not exceeding four per cent. per annum, payable semi-annually on the first day of April and October in each and every year after the date of the issue thereof; and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other City bonds, and the record thereof kept by the City Auditor and City Treasurer respectively. When due. Interest, rate of. When payable.

SEC. 2. The Finance Committee of the Council and the Sinking Fund Commissioners are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance to sell and dispose of the same to the highest and best bidder therefor, and to the best advantage of the City, and the proceeds of such sale, (though not the premiums arising therefrom), shall be received by the Board of Directors of the Street and Sewer Department, and shall be placed upon special deposit to the credit of said Department in such bank or trust company in the City of Wilmington as Authority to dispose of. Proceeds of.

shall be determined by the said Board. All orders or warrants for the payment of money to be drawn against said fund shall be signed by the President of said Board and countersigned by the City Treasurer and City Auditor, and shall have specified thereon the words, "Silverbrook Sewer, the elimination of grade crossings and paving and improving the streets and avenues." No warrant or order for the payment of money shall be drawn against said fund except it is for the payment for work done in the construction of the Silverbrook sewer, the elimination of grade crossings and the paving and improvement of the streets and avenues of the City of Wilmington.

Passed at the City Hall, June 3, A. D. 1897.

AN ORDINANCE to Provide for the Borrowing of Fifty Thousand Dollars for the Construction of the Silverbrook Sewer, the Elimination of Grade Crossings of Railroads, and the Improvement of the Streets and Avenues of the City of Wilmington.

Act of General Assembly.

WHEREAS, By an Act of the General Assembly of the State of Delaware passed at Dover, May 15th, A. D. 1897, the "The Mayor and Council of Wilmington," was authorized and empowered to borrow by ordinance of the Council, the sum or sums of money not exceeding in the aggregate, one Hundred and Twenty-five Thousand Dollars ($125,000), to be appropriated, applied and expended for the construction of the Silverbrook sewer, the elimination of grade crossings of railroads, and the improvements of the streets and avenues of the City of Wilmington, and to issue bonds of the said the "The Mayor and Council of Wilmington," for the payment thereof with interest at such times and in such manner as the said Council by ordinance shall prescribe and appoint, and

WHEREAS, It was further provided by said Act that any and all sums of money borrowed under the authority of said Act shall be borrowed by the said the "The Mayor and Council of Wilmington," at such time and in such amounts as the Board of Directors of the Street and Sewer Department of the City of Wilmington may direct; *Provided* that in no event

shall the amount to be borrowed under the provisions of said Act exceed the sum of Seventy-five Thousand Dollars in any one year, and,

WHEREAS, The said Board of Directors of the Street and Sewer Department in conformity with the provisions of said Act, did on the third day of January, A. D. 1898, request the "The Mayor and Council of Wilmington," to provide by ordinance for the borrowing of Fifty Thousand Dollars ($50,000), for the year 1898, for the construction of the Silverbrook sewer, the elimination of grade crossings of railroads, and the improvement of the streets and avenues of the City of Wilmington; and to authorize the issuance of bonds of the said the "The Mayor and Council of Wilmington," for the payment of the sum of money so to be borrowed and kept, of which said request has been presented to the Council and filed among the records thereof; therefore in pursuance and by virtue of the power and authority of the Act of the General Assembly in that behalf,

BE IT ORDAINED, By the Council of Wilmington.

SECTION 1. That immediately after the passage of this ordinance there shall be issued in the name of the "The Mayor and Council of Wilmington," bonds to the amount of Fifty Thousand Dollars ($50,000) in the aggregate. Such bonds shall be issued each for the sum of Fifty Dollars ($50.00), or multiples thereof, and shall fall due and be made payable in the manner following, to wit: Authority to issue bonds. Amount of.

Twenty-nine Thousand Four Hundred Dollars, part thereof, on the first day of April, One Thousand Nine Hundred and Twenty-six, and Twenty Thousand Six Hundred Dollars, balance thereof on the first day of October, One Thousand Nine Hundred and Twenty-six. Such bonds shall be denominated "Sinking Fund Four Per Cent. Loan," and shall bear interest at the rate of four per cent. per annum, payable semi-annually on the first day of April and October in each and every year after the date of the issue thereof; and shall be signed by the Mayor and countersigned by the City Treas- When payable. Interest, rate of.

urer and City Auditor in the same manner as other City bonds, and the record thereof kept by the City Auditor and the City Treasurer respectively.

SEC. 2. The Finance Committee of the Council and Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance to sell and dispose of the same to the highest and best bidder therefor, and to the best advantage of the City, and the proceeds of such sale (but not the premiums arising therefrom), shall be received by the Board of Directors of the Street and Sewer Department, and shall be placed upon special deposit to the credit of said Department in such bank or trust company in the City of Wilmington as shall be determined by the said Board. All orders or warrants for the payment of money to be drawn against said fund shall be signed by the President of said Board and countersigned by the City Treasurer and City Auditor, and shall have specified thereon the words, "Silverbrook Sewer, the elimination of grade crossings and paving and improving the streets and avenues." No warrant or order for the payment of money shall be drawn against said fund except it is for the payment for work done in the construction of the Silverbrook sewer, the elimination of grade crossings and the paving and improvement of the streets and avenues of the City of Wilmington.

Proceeds.
Premiums.
For Street and Sewer Department.
For what purpose issued.

Passed at the City Hall, April 14, 1898.

AN ORDINANCE to Provide for the Borrowing of Fifty Thousand Dollars for the Benefit of the Mayor and Council of Wilmington.

Preamble.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "An Act to Authorize the Mayor and Council of Wilmington to borrow the sum of Fifty Thousand Dollars and to issue Sinking Fund Bonds in payment thereof," approved the ninth day of March, A. D. 1901, the Mayor and Council was authorized and empowered to borrow by ordinance of the Council the sum of Fifty Thousand Dollars, and of the sum of Fifty Thousand Dollars the sum of

Fifteen Hundred and Fifty Dollars ($1.500), shall be appropriated, applied and expended by said Council in paying off and liquidating a certain bond and mortgage of said amount held by Elizabeth S. Taylor against the premises in the said City of Wilmington, known as Public School No. 9, and the remaining sum or whatever amount may be necessary shall be applied and expended by the Council to the liquidation of the present floating indebtedness of the City.

To liquidate certain bond and mortgage.

THEREFORE BE IT ORDAINED, By the Council of Wilmington.

SECTION 1. That immediately after the passage of this ordinance there shall be issued in the name of the Mayor and Council of Wilmington, bonds to the amount of Fifty Thousand Dollars ($50,000). Such bonds shall be issued each for the sum of Fifty Dollars ($50) or multiples thereof, and shall fall due and be made payable in the manner following, to wit: Twenty-four Thousand Dollars ($24,000) part thereof on the first day of October, One Thousand Nine Hundred and Thirteen, and Twenty-six Thousand Dollars the balance thereof on the first day of October, One Thousand Nine Hundred and Twenty-six. Said bonds shall be denominated "Sinking Fund four per cent. loan," and shall bear interest at the rate of four per centum per annum, payable semi-annually on the first day of April and the first day of October in each and every year after the date of the issue thereof; and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other city bonds, and the record thereof kept by the City Treasurer and City Auditor respectively.

Issue bonds to the amount of $50,000.

When due and payable.

Denominated.

Rate of interest and how paid.

How signed.

Records kept.

SEC. 2. The Finance Committee of the Council and the Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance to sell and dispose of the same to the highest and best bidder therefor, and to the best advantage of the City; and the proceeds of such sale shall be received by the

How dispose of.

To highest and best bidder.

Proceeds of sale.

City Treasurer and be placed by him to the credit of The Mayor and Council of Wilmington.

Passed at the City Hall, April 11, 1901.

AN ORDINANCE for the Borrowing of Fifteen Thousand Dollars to be Applied and Expended Under the Charge of the Board of Park Commissioners of the City of Wilmington.

Act of General Assembly.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "A further supplement to an Act entitled an Act to provide for public parks for the use of the City of Wilmington, and its vicinity," passed March 13th, 1883, approved the twenty-first day of March, A. D. 1901, the Mayor and Council of Wilmington was empowered to borrow a sum or sums not exceeding in the aggregate Fifty Thousand Dollars ($50,000), to be applied and expended under the charge of the Board of Park Commissioners of the said City for the purpose of improving the parks, and a sum or sums not exceeding in the aggregate Thirty Thousand Dollars ($30,000) for the purchase or acquisition in the manner authorized in the Act, to which this is a supplement, of lands to be used as additions to said parks.

Proviso.

To borrow upon recommendation Board of Park Commissioners.

AND WHEREAS, It was further provided by said Act that any and all sums of money borrowed under authority of said Act should be borrowed upon the recommendation of the said Board of Park Commissioners.

To be applied and expended under charge of Park Commissioners.

AND WHEREAS, Said Board of Park Commissioners in conformity with the provisions of said Act have filed a written recommendation wherein said Board requests the Mayor and Council of Wilmington, to provide for the borrowing of Twenty-five Thousand Dollars ($25,000), to be applied and expended under the charge of the said Board of Park Commissioners for the purpose of improving the parks; and to authorize the issuance of bonds of the said Mayor and Council of Wilmington for the payment of the sum of money so bor-

rowed, which recommendation has been presented to the Council and filed among the records thereof.

THEREFORE, In pursuance and by authority of the power and authority of the Act of the General Assembly in that behalf.

BE IT ORDAINED, By the Council of Wilmington.

SECTION 1. That immediately after the passage of this ordinance there shall be issued in the name of the Mayor and Council of Wilmington, bonds to the amount of Fifteen Thousand Dollars. Such bonds shall be issued, each, for the sum of Fifty Dollars ($50) or multiples thereof, and shall fall due and be made payable on the first day of October, One Thousand Nine Hundred and Twenty-six; such bonds shall be denominated "Sinking Fund four per cent. loan," and shall bear interest at the rate of four per centum per annum payable semi-annually on the first day of April and the first day of October of each and every year, after the issue thereof, and shall be signed by the Mayor, countersigned by the City Treasurer and City Auditor in the same manner as other city bonds, and a record thereof kept by the City Treasurer and City Auditor respectively.

Authority to issue bonds to amount of $15,000.

Shall fall due and be payable.

Interest.

When payable.

By whom signed.

Record kept.

SEC. 2. The Finance Committee of the Council and the Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance to sell and dispose of the same to the highest and best bidder therefor and to the best advantage of the City, and the proceeds of such sale, but not the premiums arising therefrom, shall be received by the City Treasurer and be by him made the subject of a special deposit in such bank at Wilmington as shall be the depository of the funds of the City, and shall only be drawn therefrom upon the proper warrant of the Council for the improvement of the public parks.

Authority to dispose of.

Dispose of to highest and best bidder.

Subject to special deposit for improvement of public parks.

Passed at the City Hall, May 2, 1901.

AN ORDINANCE for the Borrowing of Twenty-five Thousand Dollars for the Abolition of Grade Crossings of Railroads, for the Improvement of Streets and for the Extension of Sewers in the City of Wilmington.

Act of General Assembly.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "An Act to authorize the Mayor and Council of Wilmington to borrow a certain sum of money for the elimination of grade crossings of railroads, and for the improvement of streets and avenues and construction of sewers in the City of Wilmington, Delaware," approved the fourteenth day of March, A. D. One Thousand Nine Hundred and One, The Mayor and Council of Wilmington was authorized and empowered to borrow by ordinance of the Council the sum of Fifty Thousand Dollars ($50,000), to be appropriated, applied and expended in the discretion of the Board of Directors of the said City of Wilmington, for the abolition of grade crossings of railroads within the limits of the City of Wilmington, and for the opening, widening, paving and improving the streets, avenues, lanes or alleys, and for the extension of the authorized sewer system provided for and in the said City of Wilmington.

Applied and expended discretion of.

Borrowed by authority of.

AND WHEREAS, It was further provided by said Act that any and all sums of money borrowed under the authority of said Act shall be borrowed by the Mayor and Council of Wilmington at such times and in such amounts as the said Board of Directors of the Street and Sewer Department may decide and direct; *provided* that the amount to be borrowed under the provisions of said Act shall not exceed the sum of Twenty-five Thousand Dollars ($25,000) in any one calendar year.

Not to exceed.

AND WHEREAS, The said Board of Directors of the Street and Sewer Department in conformity with the provisions of said Act have filed a written request, or direction, wherein said Board directs the Mayor and Council of Wilmington to provide for the borrowing of Twenty-five Thousand Dollars ($25,000) for the purposes aforesaid, for the calendar year One Thousand Nine Hundred and One, and to authorize the issuance of bonds of the said Mayor and Council of Wilming-

To borrow by direction of.

ton for the payment of the sum of money so to be borrowed which said request or direction has been presented to the Council and filed among the records thereof.

THEREFORE, In pursuance and by virtue of the power and authority of the Act of the General Assembly in that behalf.

BE IT ORDAINED, By the Council of Wilmington.

SECTION 1. That immediately after the passage of this ordinance, there shall be issued in the name of the Mayor and Council of Wilmington, bonds to the amount of Twenty-five Thousand Dollars ($25,000), such bonds shall be issued each for the sum of Fifty Dollars ($50) or multiplies thereof, and the total amount thereof being Twenty-five Thousand Dollars ($25,000), shall fall due and be made payable on the first day of April, A. D. One Thousand Nine Hundred and Twenty-seven. Such bonds shall be denominated "Sinking Fund four per cent. loan," and shall bear interest at the rate of four per centum per annum, payable semi-annually, on the first day of April and the first day of October in each year and every year after the date of the issue thereof, and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other city bonds, and the record thereof kept by the City Treasurer and City Auditor respectively.

Authority to issue bonds.
Amount.
Shall fall due and be payable.
Denominated.
Interest when payable.
By whom signed.
Record kept.

SEC. 2. The Finance Committee of the Council and the Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance, to sell and dispose of the same to the highest and best bidder, therefor, and to the best advantage of the City, and the proceeds of such sale, but not the premium arising therefrom, shall be received by the said Board of Directors of the Street and Sewer Department, and shall be placed upon special deposit to the credit of said Board of Directors, in such bank or trust company in the City of Wilmington as shall be determined upon by said Board. All orders or warrants for the payment of money to be drawn against said fund, shall be signed by the President of said Board, and

To issue and dispose of bonds.
To highest and best bidder.
Proceeds.
Premiums.
For Street and Sewer Department.
Special deposit.
Orders.

By whom signed.

countersigned by the City Treasurer and City Auditor, and no warrant or order for the payment of money shall be drawn

Restriction.

against such funds, except such order or warrant is for payment for work done upon or about the improvements provided

At discretion of Board of Directors.

for in said Act; *provided, however, further,* that it shall be discretionary with said Board of Directors of the Street and Sewer Department as to which improvement or improvements, any, or all such money or moneys, shall be applied.

Passed at the City Hall, May 2, 1901.

AN ORDINANCE for the Borrowing of Twenty-five Thousand Dollars for the Abolition of Grade Crossings of Railroads, for the Improvements of Streets and for the Extension of Sewers in the City of Wilmington.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "An Act to Authorize the Mayor and Council of Wilmington to borrow a certain sum of money for the elimination of grade crossings of railroads, and for the improvement of streets and avenues and construction of sewers in the City of Wilmington, Delaware," approved the fourteenth day of March, A. D. One Thousand Nine Hundred and One. The Mayor and Council of Wilmington was authorized and empowered to borrow by ordinance of the Council the sum of Fifty Thousand Dollars ($50,000) to be appropriated, applied and expended in discretion of the Board of Directors of the Street and Sewer Department of the City of Wilmington, for the abolition of grade crossings of railroads within the limits of the City of Wilmington, and for the opening, widening, paving and improving the streets, avenues, lanes or alleys and for the extension of the authorized sewer system provided for and in the said City of Wilmington.

AND WHEREAS, It was further provided by said Act that any and all sums of money borrowed under the authority of said Act shall be borrowed by the Mayor and Council of Wilmington at such times and in such amounts as the said Board of Directors of the Street and Sewer Department may decide and direct; *provided* that the amount to be borrowed under

the provisions of said Act shall not exceed the sum of Twenty-five Thousand Dollars ($25,000) in any one calendar year.

And Whereas, The said Board of Directors of the Street and Sewer Department in conformity with the provisions of said Act have filed a written request, or direction, wherein said Board directs the Mayor and Council of Wilmington to provide for the borrowing of Twenty-five Thousand Dollars ($25,000) for the purposes aforesaid, for the calendar year One Thousand Nine Hundred and Two, and to authorize the issuance of bonds of the said Mayor and Council of Wilmington for the payment of the sum of money so borrowed which said request or direction has been presented to the Council and filed among the records thereof.

Therefore, In pursuance and by virtue of the power and authority of the Act of the General Assembly in that behalf.

Be it ordained, By the Council of Wilmington.

Section 1. That immediately after the passage of this ordinance, there shall be issued in the name of the Mayor and Council of Wilmington, bonds to the amount of Twenty-five Thousand Dollars ($25,000), such bonds shall be issued each for the sum of Fifty Dollars ($50) or multiples thereof, and the total amount thereof being Twenty-five Thousand Dollars ($25,000) shall fall due and be made payable on the first day of April, A. D. One Thousand Nine Hundred and Twenty-seven. Such bonds shall be denominated "Sinking Fund four per cent. loan," and shall bear interest at the rate of four per centum per annum, payable semi-annually, on the first day of April and the first day of October in each and every year after the date of the issue thereof, and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other city bonds, and the record thereof kept by the City Treasurer and City Auditor respectively.

Bonds to be issued for $25,000.

Rate, 4 per cent. per annum.

Sec. 2. The Finance Committee of the Council and the Commissioners of the Sinking Fund are hereby authorized

Manner of sale.

and directed immediately after the issuance of the bonds, provided for by this ordinance, to sell and dispose of the same to the highest and best bidder therefor, and to the best advantage of the City, and the proceeds of such sale, but not the premiums arising therefrom, shall be received by the said Board of Directors of the Street and Sewer Department, and shall be placed upon special deposit to the credit of said Board of Directors, in such bank or trust company, in the City of Wilmington as shall be determined upon by said Board. All orders or warrants for the payment of money to be drawn against said fund, shall be signed by the President of said Board, and countersigned by the City Treasurer and City Auditor, and no warrant or order for the payment of money shall be drawn against such funds, except such order or warrant is for payment for work done upon or about the improvements provided for in said Act; *provided, however, further,* that it shall be discretionary with said Board of Directors of the Street and Sewer Department as to which improvement or improvements, any, or all such money or moneys, shall be applied.

Premium not to go to Street and Sewer Department.

Warrants.

Expenditure discretionary.

Approved by the Mayor, May 10, 1902.

AN ORDINANCE Providing for the Borrowing of Fifteen Thousand Dollars to be Applied and Expended Under the Charge of the Board of Park Commissioners of the City of Wilmington.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "A further supplement to an Act entitled an Act to provide for public parks for the use of the City of Wilmington, and its vicinity," passed March 13th, 1883, approved the twenty-first day of March, 1901, the Mayor and Council of Wilmington was empowered to borrow a sum or sums not exceeding in the aggregate Fifty Thousand Dollars ($50,000), to be applied and expended under the charge of the Board of Park Commissioners of the said City for the purpose of improving the parks, and a sum or sums not exceeding in the aggregate Thirty Thousand Dollars ($30,000), for the purchase or acquisition in the manner authorized in the

Act, to which this is a supplement, of lands to be used as additions to said parks.

And Whereas, It was further provided by said Act that any and all sums of money borrowed under authority of said Act should be borrowed upon the recommendation of the said Board of Park Commissioners.

And Whereas, Said Board of Park Commissioners in conformity with the provisions of said Act have filed a written recommendation wherein said Board requests the Mayor and Council of Wilmington, to provide for the borrowing of Fifteen Thousand Dollars ($15,000), to be applied and expended under the charge of the said Board of Park Commissioners for the purpose of improving the parks; and to authorize the issuance of bonds of the said Mayor and Council of Wilmington for the payment of the sum of money so borrowed, which recommendation has been presented to the Council and filed among the records thereof.

Therefore, In pursuance and by authority of the power and authority of the Act of the General Assembly in that behalf.

Be it ordained, By the Council of Wilmington.

Section 1. That immediately after the passage of this ordinance there shall be issued in the name of the Mayor and Council of Wilmington, bonds to the amount of Fifteen Thousand Dollars. Such bonds shall be issued each for the sum of Fifty Dollars ($50.00) or multiples thereof, and shall fall due and be made payable in the manner following, to wit: One or more of said bonds for the aggregate sum of Six Thousand Nine Hundred Dollars ($6900.00) on the first day of October, A. D. One Thousand Nine Hundred and Twenty-six; and one or more bonds for the aggregate sum of Eight Thousand One Hundred Dollars ($8100.00) on the first day of April, One Thousand Nine Hundred and Twenty-seven; such bonds shall be denominated "Sinking Fund four per cent. loan," and shall bear interest at the rate of four per centum per annum

Bonds to be issued for $50,000.

Rate, 4 per cent. per annum.

payable semi-annually on the first day of April and the first day of October of each and every year, after the issue thereof, and shall be signed by the Mayor, countersigned by the City Treasurer and City Auditor in the same manner as other City bonds, and a record thereof kept by the City Treasurer and City Auditor respectively.

Sinking Fund.

SEC. 2. The Finance Committee of the Council and the Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance to sell and dispose of the same to the highest and best bidder therefor and to the best advantage of the City, and the proceeds of such sale, but not the premiums arising therefrom, shall be received by the City Treasurer and be by him made the subject of a special deposit in such bank at Wilmington as shall be the depository of the funds of the City, and shall only be drawn therefrom upon the proper warrant of the Council for the improvement of the public parks.

Manner of sale.

Approved by the Mayor, May 10, 1902.

AN ORDINANCE Providing for the Borrowing of Thirty Thousand Dollars to be Applied and Expended Under the Charge of the Board of Park Commissioners of the City of Wilmington for the Purchase of Park Land for Park Purposes.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "A further supplement to an Act entitled an Act to provide for public parks for the use of the City of Wilmington, and its vicinity," passed March 13th, 1883, approved the twenty-first day of March, A. D. 1901, the Mayor and Council of Wilmington was empowered to borrow a sum or sums not exceeding in the aggregate Fifty Thousand Dollars ($50,000), to be applied and expended under the charge of the Board of Park Commissioners of the said City for the purpose of improving the parks, and a sum or sums not exceeding in the aggregate Thirty Thousand Dollars ($30,000) for the purchase or acquisition in the manner authorized in

the Act, to which this is a supplement, of lands to be used as additions to said parks, and,

WHEREAS, It was further provided by said Act that any and all sums of money borrowed under authority of said Act should be borrowed upon recommendation of the said Board of Park Commissioners; and,

WHEREAS, Said Board of Park Commissioners in conformity with the provisions of said Act have filed a written recommendation wherein said Board requests the Mayor and Council of Wilmington to provide for the borrowing of Thirty Thousand Dollars ($30,000), to be applied and expended under the charge of the said Board of Park Commissioners for the purpose of purchasing land for park purposes; and to authorize the issuance of bonds of the said Mayor and Council of Wilmington for the payment of the sum so borrowed, which recommendation has been presented to the Council and filed among the records thereof.

THEREFORE, In pursuance and by authority of the power and authority of the Act of the General Asesmbly in that behalf.

BE IT ORDAINED, By the Council of Wilmington.

SECTION 1. That immediately after the passage of this ordinance there shall be issued in the name of the Mayor and Council of Wilmington, bonds to the amount of Thirty Thousand Dollars ($30,000). Such bonds shall be issued, each, for the sum of Fifty Dollars ($50.00) or multiples thereof and shall fall due and be made payable, in the following manner: Twelve Thousand Four Hundred Dollars ($12,400) on the first day of April, One Thousand Nine Hundred and Twenty-seven, and Seventeen Thousand Six Hundred Dollars ($17,600) on the first day of October, One Thousand Nine Hundred and Twenty-seven; such bonds shall be denominated "Sinking Fund four per cent. loan," and shall bear interest at the rate of four per centum per annum payable semi-annually on the first day of April and the first day of October of

Bonds to be issued for $30,000.

Payable in series.

Sinking Fund.

each and every year, after the issue thereof, and shall be signed by the Mayor, countersigned by the City Treasurer and City Auditor in the same manner as other City bonds, and a record thereof kept by the City Treasurer and the City Auditor respectively.

Sale by Finance Committee.

SEC. 2. The Finance Committee of the Council and the Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance to sell and dispose of the same to the highest and best bidder therefor and to the best advantage of the City, and the proceeds of such sale, but not the premiums arising therefrom, shall be received by the City Treasurer and be by him made the subject of a special deposit in such bank at Wilmington as shall be the depository of the funds of the City, and shall only be drawn therefrom upon the proper warrant of the Council for the purchase of land for park purposes.

Disposition of proceeds.

Approved by the Mayor, December 26, 1902.

AN ORDINANCE for the Borrowing of Fifty Thousand Dollars for the Abolition of Grade Crossings of Railroads, for the Improvement of Streets, and for the Extension of Sewers in the City of Wilmington.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "An Act to authorize The Mayor and Council of Wilmington to borrow a certain sum of money for the elimination of grade crossings of railroads and for the improvement of streets and avenues and construction of sewers in the City of Wilmington, Delaware," approved the sixth day of April, A. D. One Thousand Nine Hundred and Five, the Mayor and Council of Wilmington was authorized and empowered to borrow by ordinance of the Council the sum of Fifty Thousand Dollars ($50,000), to be appropriated, applied and expended in discretion of the Board of Directors of the Street and Sewer Department of the City of Wilmington, for the abolition of grade crossings of railroads within the limits of the City of Wilmington, and for the opening, widen-

ing, paving and improving the streets, avenues, lanes or alleys and for the extension of the authorized sewer system provided for and in the said City of Wilmington;

And Whereas, It was further provided by said Act that any and all sums of money borrowed under the authority of said Act shall be borrowed by the Mayor and Council of Wilmington at such times and in such amounts as the said Board of Directors of the Street and Sewer Department may decide and direct; provided that the amount to be borrowed under the provisions of said Act shall not exceed the sum of Fifty Thousand Dollars ($50,000) in any one calendar year;

And Whereas, The said Board of Directors of the Street and Sewer Department, in conformity with the provisions of said Act have filed a written request, or direction, wherein said Board directs the Mayor and Council of Wilmington to provide for the borrowing of Fifty Thousand Dollars ($50,000) for the purposes aforesaid, for the calendar year One Thousand Nine Hundred and Five, and to authorize the issuance of bonds of the said Mayor and Council of Wilmington for the payment of the sum of money to be so borrowed, which said request or direction has been presented to the Council and filed among the records thereof.

Therefore, In pursuance and by virtue of the power and authority of the Act of the General Assembly in that behalf.

Be it ordained, By the Council of Wilmington.

Section 1. That immediately after the passage of this ordinance, there shall be issued in the name of the Mayor and Council of Wilmington, bonds to the amount of Fifty Thousand Dollars ($50,000), such bonds shall be issued each for the sum of Fifty Dollars ($50) or multiples thereof; one or more of said bonds or certificates of indebtedness for the sum of Twenty-nine Thousand Eight Hundred Dollars ($29,800) shall fall due and be payable on the first day of April, A. D. One Thousand Nine Hundred and Twenty-eight, and one or more of said bonds or certificates of indebtedness for the sum

Bonds to be issued for $50,000.

of Twenty Thousand Two Hundred Dollars ($20,200) shall fall due and be payable on the first day of October, A. D. One Thousand Nine Hundred and Twenty-eight. Such bonds shall be denominated "Sinking Fund four per cent. loan," and shall bear interest at the rate of four per centum per annum, payable semi-annually, on the first day of April and the first day of October in each and every year after the date of the issue thereof, and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other City bonds, and the record thereof kept by the City Treasurer and City Auditor respectively.

Sinking Fund.

Ordinance, July 29, 1905.

SEC. 2. [The Finance Committee of the Council and the Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance, to sell and dispose of the same to the highest and best bidder therefor, and to the best advantage of the City. The moneys borrowed as aforesaid shall be received by the said Board of Directors of the Street and Sewer Department, and shall be placed upon special deposit to the credit of said Board of Directors, in such bank or trust company, in the City of Wilmington, as shall be determined upon by said Board. All orders or warrants for the payment of money to be drawn against said fund, shall be signed by the President of said Board and countersigned by the City Treasurer and City Auditor, and no warrant or order for the payment of money shall be drawn against such funds, except such order or warrant is for payment for work done upon or about the improvements provided for in said Act; *provided, however, further*, that it shall be discretionary with said Board of Directors of the Street and Sewer Department as to which improvement or improvements any or all such money or moneys shall be applied, provided that not more than one-third of the moneys so borrowed shall be applied for the extension of sewers.]

Disposition of proceeds.

Approved April 27, 1905.

AN ORDINANCE for the Borrowing of Fifty Thousand Dollars for the Abolition of Grade Crossings of Railroads, for the Improvement of Streets and for the Extension of Sewers in the City of Wilmington.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "An Act to authorize the Mayor and Council of Wilmington to borrow a certain sum of money for the elimination of grade crossings of railroads, and for the improvement of streets and avenues and construction of sewers in the City of Wilmington, Delaware," approved the sixth day of April, A. D. One Thousand Nine Hundred and Five. The Mayor and Council of Wilmington was authorized and empowered to borrow by ordinance of the Council the sum of Fifty Thousand Dollars ($50,000) to be appropriated, applied and expended in discretion of the Board of Directors of the Street and Sewer Department of the said City of Wilmington, for the abolition of grade crossings of railroads within the limits of the City of Wilmington, and for the opening, widening, paving and improving the streets, avenues, lanes or alleys and for the extension of the authorized sewer system provided for and in the said City of Wilmington.

AND WHEREAS, It was further provided by said Act that any and all sums of money borrowed under the authority of said Act shall be borrowed by the Mayor and Council of Wilmington at such times and in such amounts as the said Board of Directors of the Street and Sewer Department may decide and direct; provided that the amount to be borrowed under the provisions of said Act shall not exceed the sum of Fifty Thousand Dollars ($50,000) in any one calendar year.

AND WHEREAS, The said Board of Directors of the Street and Sewer Department in conformity with the provisions of said Act have filed a written request or direction, wherein said Board directs the Mayor and Council of Wilmington to provide for the borrowing of Fifty Thousand Dollars ($50,000) for the purposes aforesaid, for the calendar year One Thousand Nine Hundred and Six, and to authorize the issuance of bonds of the said Mayor and Council of Wilmington for the

payment of the sum of money to be so bororwed, which said request or direction has been presented to the Council and filed among the records thereof.

THEREFORE, In pursuance and by virtue of the power and authority of the Act of the General Assembly in that behalf.

Bonds to be issued for $50,000.

SECTION 1. That immediately after the passage of this ordinance there shall be issued in the name of the Mayor and Council of Wilmington, bonds to the amount of Fifty Thousand Dollars ($50,000); such bonds shall be issued each for the sum of Fifty Dollars ($50.00) or multiples thereof, and the total amount thereof being Fifty Thousand Dollars ($50,000), shall fall due and be made payable on the first day of October, A. D. One Thousand Nine Hundred and Twenty-eight. Such bonds shall be denominated "Sinking Fund four per cent. loan," and shall bear interest at the rate of four per centum per annum, payable semi-annually on the first day of April and the first day of October in each and every year after the date of the issue thereof, and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other City bonds, and the record thereof kept by the City Treasurer and City Auditor respectively.

Sinking Fund.

Sale of bonds.

SEC. 2. The Finance Committee of the Council and the Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of the bonds, provided for by this ordinance, to sell and dispose of same to the highest and best bidder, therefor, and to the best advantage of the City. The moneys borrowed as aforesaid shall be received by the said Board of Directors of the Street and Sewer Department and shall be placed upon special deposit to the credit of the said Board of Directors in such bank or trust company in the City of Wilmington as shall be determined upon by the said Board. All orders or warrants for the payment of money to be drawn against said fund, shall be signed by the President of said Board and countersigned by the City Treasurer and City Auditor, and no warrant or order for the payment of money shall be drawn against such funds, except such order or warrant is for payment for work done upon or

Disposition of proceeds.

about the improvements provided for in said Act; *provided, however, further,* that it shall be discretionary with said Board of Directors of the Street and Sewer Department as to which improvement or improvements, any, or all such money or moneys shall be applied; provided that not more than one-third of the moneys so borrowed shall be applied for the extension of sewers.

Approved March 8, 1906.

AN ORDINANCE Providing for the Borrowing of Ten Thousand Dollars to be Applied and Expended under the Charge of the Board of Park Commissioners of the City of Wilmington for the Purpose of Improving the Parks.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "A further supplement to an Act entitled An Act to provide for Public Parks for the use of the City of Wilmington and its vicinity, passed March 13th, 1883," approved March 21, A. D. 1901, the Mayor and Council of Wilmington were authorized to borrow a sum or sums not exceeding in the aggregate of Fifty Thousand Dollars to be applied and expended under the charge of the Board of Park Commissioners of the said City for the purpose of improving the parks, and a sum or sums not exceeding in the aggregate Thirty Thousand Dollars for the purchase or acquisition, in the manner authorized in the Act to which it was a supplement, of lands to be used as additions to said parks;

AND WHEREAS, It was further provided by said Act that any and all sums of money borrowed under authority of said Act should be borrowed upon recommendation of the said Board of Park Commissioners;

AND WHEREAS, Said Board of Park Commissioners in conformity with the provisions of said Act have filed a written recommendation wherein said Board requests the Mayor and Council of Wilmington to provide for the borrowing of Ten Thousand Dollars to be applied and expended under the charge of the said Board of Park Commissioners for the pur-

pose of improving the parks; and to authorize the issuance of bonds of the said Mayor and Council of Wilmington for the payment of the sum of money so borrowed, which recommendation has been presented to the Council and filed among the records thereof;

THEREFORE, In pursuance and by virtue of the power and authority of the Act of the General Assembly in that behalf.

BE IT ORDAINED, By the Council of Wilmington.

Bonds to be issued for $10,000.

SECTION 1. That immediately after the passage of this ordinance there shall be issued in the name of the Mayor and Council of Wilmington, bonds to the amount of Ten Thousand Dollars. Such bonds shall be issued each for the sum of Fifty Dollars, or multiples thereof, and shall fall due and be made payable in the manner following, to wit: On the first day of April, One Thousand Nine Hundred and Twenty-eight. Such bonds shall be denominated "Sinking Fund four per cent. loan," and shall bear interest at the rate of four per centum per annum payable semi-annually on the first day of April and the first day of October of each and every year, after the issue thereof, and shall be signed by the Mayor, countersigned by the City Treasurer and City Auditor in the same manner as other City bonds, and a record thereof kept by the City Treasurer and City Auditor respectively.

Rate, 4 per cent. per annum. Sinking Fund.

Manner of sale.

Proceeds.

SEC. 2. The Finance Committee of the Council and the Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance to sell and dispose of the same to the highest and best bidder therefor and to the best advantage of the City, and the proceeds of such sale, but not the premiums arising therefrom, shall be received by the City Treasurer and be by him the subject of a special deposit in such bank at Wilmington as shall be the depository of the funds of the city, and shall be drawn therefrom only upon the proper warrant of the Council for the improvement of the public parks.

Approved August 2, 1904.

AN ORDINANCE Providing for a Loan of Two Hundred Thousand Dollars for the Benefit of the Board of Water Commissioners.

WHEREAS, By Section 12 of the Act entitled "An Act to establish a Board of Water Commissioners for the City of Wilmington and for other purposes," pasesd at Dover, April 18th, 1883, and by a subsequent Act entitled "An Act to authorize The Mayor and Council of Wilmington to borrow the sum of Two Hundred Thousand Dollars for the use of the Board of Water Commissioners of said City," passed at Dover, March 31st, A. D. 1903, it is provided that for the purpose of defraying all the costs of acquiring real estate for reservoirs, laying pipes, purchasing and establishing engines, constructing all the works contemplated by this Act, the City of Wilmington upon the requisition of the said Board of Water Commissioners, shall issue bonds, to be denominated "Wilmington City Bonds" in an amount not exceeding Two Hundred Thousand Dollars. And

WHEREAS, The Board of Water Commissioners on the twenty-first day of September, A. D. 1904, issued their requisition, directed to this Council, setting forth that they had decided to purchase, construct and equip a new water system, and requesting The Council to pass an ordinance providing for the issuing to them of the bonds of the City of Wilmington of the amount of Two Hundred Thousand Dollars, as the necessities of the Board may require, in accordance with Section 12 of the Act of the General Assembly aforesaid, which said requisition was presented and filed in The Council on the twenty-second day of September, A. D. 1904.

NOW, THEREFORE, BE IT ORDAINED, By the Council of Wilmington.

SECTION 1. That immediately after the passage of this ordinance, there shall be issued in the name of The Mayor and Council of Wilmington, bonds to the amount of Two Hundred Thousand Dollars, such bonds shall be issued each of One Thousand Dollars and shall be made payable at the expiration of twenty years from the date thereof and may contain a pro-

Bonds to be issued for $200,000.

Redemption by Board of Water Commissioners.

vision for the redemption thereof by the said Board of Water Commissioners at any time after the expiration of five years from the date thereof, at a premium not to exceed five per cent. Said bonds shall also be liable to be redeemed at their face value at any interest bearing period, as follows: The said Board of Water Commissioners shall redeem at the expiration of the fifth year from the date of the said bonds, fifteen of the said bonds at par, and to pay and redeem at the expiration of each and every year thereafter, an additional fifteen of said bonds until the twentieth year, when the said Board of Water Commissioners shall pay and redeem the balance of said bonds.

Registered or coupon.

SEC. 2. The said bonds may be either registered or coupon bonds, as the said Board of Water Commissioners may determine, and shall bear interest at a rate not to exceed four per cent. per annum. The said bonds, principal and interest, shall be payable at the Union National Bank of Wilmington out of the money from time to time appropriated for that purpose by the said Board of Water Commissioners. The bonds issued under the provisions of this ordinance shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other City bonds; and a record thereof shall be made and kept by the City Auditor and City Treasurer and by the Board of Water Commissioners.

Series.

The said bonds shall all bear the same date and shall be numbered from No. 1 to 200, inclusive. If coupon bonds shall be issued, the coupons shall bear the engraved signature of the City Treasurer.

Sale of bonds.

SEC. 3. The Board of Water Commissioners may sell and dispose of the said bonds hereby authorized to be issued on the most advantageous terms possible, but no commission shall be charged or paid to any member of the said Board for effecting the sale, or negotiating the sale of the said bonds. Any money received from the sale of any or all of the said bonds shall be deposited by the City Treasurer to the credit of the Board of Water Commissioners in a separate account, and payment therefrom shall be made in the same manner as other payments by the Board of Water Commissioners, provided, that

no part of the money thus obtained shall be used by the said Board of Water Commissioners for any purpose other than the construction, erection and equipment of the new reservoir to be located in Brandywine Hundred, New Castle County, and for the purchase, construction and equipment of the pipes, mains, filter plant, clear water basin, buildings and machinery proper for the construction, completion and operation of the said reservoir in connection with the water works of the City of Wilmington. Disposition of proceeds.

SEC. 4. The principal and interest of the said bonds shall be paid in gold coin of the United States of America. Payable in gold.

SEC. 5. All charges and expenses connected with the preparation of the said bonds, and of the sale thereof, shall be paid by the said Board of Water Commissioners by money to be appropriated by them for that purpose. Expenses to be paid by Water Department.

Approved October 24, 1904.

AN ORDINANCE Providing for the Borrowing of Forty-five Thousand Dollars to be Applied and Expended Under the Charge of the Board of Park Commissioners of the City of Wilmington.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "A further supplement to an Act entitled An Act to provide for public parks for the use of the City of Wilmington, and its vicinity, passed March 13th, 1883," approved March 29th, 1905. The Mayor and Council of Wilmington was empowered to borrow a sum or sums not exceeding in the aggregate ($20,000) Twenty Thousand Dollars to be applied and expended under the charge of the Board of Park Commissioners of said City for the purpose of improving the parks and a sum or sums not exceeding in the aggregate ($30,000) Thirty Thousand Dollars for the purchase or acquisition, in the manner authorized in the Act to which this is a supplement, of lands to be used as additions of said parks.

And Whereas, It was further provided by said Act that any and all sums borrowed under the authority of said Act should be borrowed upon the recommendation of the said Board of Park Commissioners,

And Whereas, Said Board of Park Commissioners, in conformity with the provisions of said Act, have filed written recommendations wherein said Board requests The Mayor and Council of Wilmington to provide for the borrowing of ($15,000) Fifteen Thousand Dollars for the purpose of improving the parks and to provide for the borrowing of ($30,000) Thirty Thousand Dollars for the purchase or acquisition of lands to be used as additions to the public parks; the said amounts to be applied and expended under the charge of the said Board of Park Commissioners; and to authorize the issuance of bonds of The Mayor and Council of Wilmington for the payment of the sums of money so borrowed, which recommendations have been presented to the Council and filed among the records thereof;

Therefore, In pursuance and by authority of the power and authority of the Act of the General Assembly in that behalf.

Be it ordained, By the Council of Wilmington.

Bonds to be issued for $45,000.

Section 1. That immediately after the passage of this ordinance there shall be issued in the name of The Mayor and Council of Wilmington, bonds to the amount of Forty-five Thousand Dollars. Such bonds shall be issued each for the sum of Fifty Dollars or multiples thereof, and shall fall due and be made payable as follows: Sixty-nine Hundred Dollars on the first day of October, A. D. One Thousand Nine Hundred and Twenty-eight; and Thirty-eight Thousand One Hundred Dollars on the first day of April, A. D. One Thousand Nine Hundred and Twenty-nine. Such bonds shall be denominated "Sinking Fund four per cent. loan," and shall bear interest at the rate of four per centum per annum payable semi-annually on the first day of April and the first day of October of each and every year after the issue thereof, and

Rate, 4 per cent. Sinking Fund.

shall be signed by the Mayor, countersigned by the City Treasurer and City Auditor in the same manner as other City bonds, and a record thereof shall be kept by the City Treasurer and City Auditor respectively.

SEC. 2. The Finance Committee of the Council and the Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance to sell and dispose of the same to the highest and best bidder therefor and to the best advantage of the City, and the proceeds of such sale shall be received by the City Treasurer, and the amount of the issue, but not the premium arising therefrom, shall be by him made the subject of a special deposit in such bank at Wilmington as shall be the depository of the funds of the City and shall be drawn therefrom, only upon the proper warrant of the Council, for improvements to park lands or for the purchase or acquisition of lands for additions to the public parks.

Sale.

Receipt of proceeds.

For park lands.

Approved 3rd Day of April, A. D. 1906.

AN ORDINANCE to Borrow Eight Hundred Thousand Dollars for the Completion and Operation of the Water Supply System of the City of Wilmington.

WHEREAS, By an Act of the General Assembly of the State of Delaware, approved March 29th, A. D. 1907, entitled "An Act to authorize The Mayor and Council of Wilmington to borrow Eight Hundred Thousand Dollars for the purpose of paying off any floating indebtedness and current liability in connection with the Water Works System of the City of Wilmington, and for defraying the cost of acquiring real estate and water rights; and for the completion, construction, erection and equipment of new reservoirs, filter plants, pumping stations, pumping engines, pipes, mains and other appurtenances necessary for the completion and operation of the reservoir and filtration plants in connection with the extension of the Water Supply System of the City of Wilmington," The Mayor and Council of Wilmington was authorized and empowered to borrow, by ordinance of The Council a sum not ex-

ceeding Eight Hundred Thousand Dollars, to be expended for the purpose of paying off any floating indebtedness and current liability in connection with the Water Works System of the City of Wilmington, and for defraying the cost of acquiring real estate and water rights; and for the completion, operation, construction, erection and equipment of new reservoirs, filter plants, pumping stations, pumping engines, pipes, mains and other appurtenances necessary for the completion and operation of the Water Supply System of the City of Wilmington; and for the purpose of securing the payment of such sum, to issue bonds in denominations of One Thousand Dollars each, bearing such rate of interest not exceeding four and one-half per centum per annum as The Council of The Mayor and Council of Wilmington may deem expedient;

And Whereas, It was further provided in said Act that said bonds or any parts thereof, may be sold when and as The Council of The Mayor and Council of Wilmington shall determine;

And Whereas, It was further provided in said Act that whenever the Board of Water Commissioners of the City of Wilmington shall deem it necessary to have The Council sell any or all of said bonds, the said Board shall by resolution request The Council to issue any portion or all of said bonds;

And Whereas, The said Board of Water Commissioners in conformity with the provisions of said Act deeming it necessary to have all of said bonds issued and sold, has by resolution of said Board requested the said Council to issue and sell all of said bonds, said resolution having been presented to said Council and filed among the records thereof;

Therefore, In pursuance and by virtue of the power and authority of the Act of the General Assembly in that behalf:

* * * * * * * * * *

Section 1. That immediately after the passage of this ordinance there shall be issued in the name of The Mayor and Council of Wilmington in accordance with the provisions of

the above-recited Act of the General Assembly of the State of Delaware, bonds to the amount of Eight Hundred Thousand Dollars in the aggregate, and the credit of The Mayor and Council of Wilmington is hereby pledged for the payment of both principal and interest in accordance with the terms of the aforesaid Act. Such bonds shall be dated May first, A. D. 1907, and shall be issued for the sum of One Thousand Dollars each, and shall fall due and become payable as provided for in the above recited Act of the General Assembly. Such bonds shall be denominated "Wilmington Water Works Bonds," and shall bear interest at the rate of four per centum per annum, payable semi-annually on the first day of May and the first day of November in each and every year after the date of the issue thereof; and shall be signed by the Mayor of the City of Wilmington and under the seal of the City and shall be countersigned by the City Treasurer and City Auditor in the same manner as other City bonds; and it shall be the duty of such officers to execute said bonds when directed by resolution of The Council to do so, and it shall also be the duty of the City Treasurer, City Auditor and Board of Water Commissioners to keep a record of said bonds.

Bonds to be issued for $800,000.

Rate, 4 per cent.

Manner of execution of bonds.

SEC. 2. The Finance Committee of The Council is hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance, to sell and dispose of all or any part of said bonds to the highest and best bidder or bidders therefor, on the most advantageous terms possible, after having advertised the sale of the same in the public press at least once each week for at least two weeks, and the money received from the sale of said bonds shall be paid to the City Treasurer and by him deposited to the credit of the Board of Water Commissioners in a separate account, and payments therefrom shall be made in the same manner as other payments are made by the Board of Water Commissioners. The money so obtained and deposited shall be used by said Board of Water Commissioners as provided in said Act of the General Assembly; *provided* that the purchasers or holders of said bonds shall not be bound to see to or be affected by the application or mis-application of any of said money realized from the sale of said bonds.

Sale.

Disposition of proceeds.

SEC. 3. Said bonds shall contain such provision not inconsistent with the aforesaid Act of Assembly as shall secure to the holders thereof the payment of the principal and interest due thereon, according to the provisions of said Act of Assembly.

Approved May 2, 1907.

AN ORDINANCE to Authorize The Mayor and Council of Wilmington to Borrow Two Hundred and Fifty Thousand Dollars for the Curbing, Guttering, Grading, Widening, Paving and Improving of Streets and Avenues and the Building of Sewers and Conduits, in the City of Wilmington, Delaware.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "An Act to authorize The Mayor and Council of Wilmington to borrow money for the curbing, guttering, grading, widening, paving and improving of streets and avenues and the building of sewers and conduits, in the City of Wilmington, Delaware," approved March 4th, A. D. 1907. The Mayor and Council of Wilmington was given power and authority to borrow money for the curbing, guttering, grading, widening, paving and improving of the streets, avenues, lanes or alleys and the building of sewers and conduits in the City of Wilmington, Delaware, in such amounts and at such times as the said The Mayor and Council of Wilmington should deem necessary to be borrowed and as said The Mayor and Council of Wilmington should by ordinance, prescribe and appoint; and to issue the bonds of said City in payment therefor with interest;

AND WHEREAS, It is further provided by said Act that the Board of Directors of the Street and Sewer Department of The Mayor and Council of Wilmington, shall, before any moneys are so borrowed under the authority of said Act, prepare and present to the Council of the said The Mayor and Council of Wilmington a list showing location and estimated cost of improvements as far as practicable which improve-

ments in the judgment of said Board of Directors of the Street and Sewer Department should be made;

And Whereas, The said Board of Directors of the Street and Sewer Department in conformity with the provisions of said Act, have prepared and presented to said The Council a list showing the location, and the estimated cost of improvements, which in the judgment of said Board of Directors of the Street and Sewer Department should be made;

And Whereas, The said The Council of The Mayor and Council of Wilmington proposes to fix by ordinance the amount to be borrowed, basing said amount on the estimates submitted by the said Board of Directors of the Street and Sewer Department;

And Whereas, In the judgment of The Council, the sum of Two Hundred and Fifty Thousand Dollars should be borrowed for the purposes recited in said Act;

Therefore, In pursuance and by virtue of the power and authority vested in The Council by said Act of the General Assembly of the State of Delaware in that behalf.

Be it ordained, By The Council of Wilmington (two-thirds of all the members of The Council concurring herein):

Section 1. That immediately after the passage of this ordinance, there shall be issued in the name of The Mayor and Council of Wilmington, in accordance with the provisions of the above recited Act of the General Assembly of the State of Delaware, bonds to the amount of Two Hundred and Fifty Thousand Dollars; such bonds shall be issued each for the sum of Fifty Dollars ($50.00) or multiples thereof and shall fall due and become payable as follows: $41,200 thereof on the first day of April, 1929; $81,600 thereof on the first day of October, 1929; $84,200 thereof on the first day of April, 1930, and $43,000 thereof on the first day of October, 1930.

Bonds to be issued for $250,000.

Maturity.

Said bonds shall be denominated "Wilmington City Bonds," and shall bear interest at the rate of four per centum

Rate, 4 per cent.

per annum, payable semi-annually on the first day of April and the first day of October in each and every year after the date of the issue thereof, and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other City bonds are signed, and a record thereof shall be kept by the City Treasurer and City Auditor, respectively.

Sale of bonds.

SEC. 2. The Finance Committee of The Council and the Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance, to sell and dispose of any part or all of the said bonds in such amount or amounts as the Finance Committee of The Council shall determine, to the highest and best bidder or bidders therefor and to the best advantage of the City. The moneys so borrowed shall be paid into the City Treasury, and upon receipt of the same by the City Treasurer, he shall deliver the amount of the same to the Board of Directors of the Street and Sewer Department, of the said City of Wilmington which said Board shall have supervision, management, direction and control of the work required to be done with the proceeds of the sale of said bonds and the expenditure of the money necessary with respect thereto. *Provided, however,* that the purchasers or holders of the bonds to be issued under the provisions of this ordinance shall in no wise be responsible for the application or mis-application of the funds realized from the sale of said bonds.

Proceeds to Street and Sewer Department.

Deposit of proceeds.

SEC. 3. All moneys borrowed under the provisions of this ordinance shall be placed or deposited by the Board of Directors of the Street and Sewer Department of the said City of Wilmington in such bank or trust company in the City of Wilmington as shall be the depository of the funds of such Board, and no warrant or order for the payment of money shall be drawn against said funds except such warrant or order is for payment for work done or materials furnished or implements used upon or about the improvement or improvements provided for in said Act of the General Asesmbly, or for the curbing, guttering, grading, widening, paving and improving of

the streets, avenues, lanes or alleys and the building of sewers and conduits in the City of Wilmington, Delaware.

All orders or warrants for the payment of money to be drawn against said funds, shall be signed by the President of said Board and countersigned by the City Treasurer and City Auditor. Warrants for money used.

Approved May 2, 1907.

AN ORDINANCE to Authorize The Mayor and Council of Wilmington to Borrow Ten Thousand Dollars to be Applied and Expended Under the Charge of the Board of Park Commissioners of the Said City for the Purpose of Improving the Public Parks.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "A further supplement to an Act entitled An Act to provide for public parks for the use of the City of Wilmington and its vicinity," passed March 13th, 1883, approved March 21, 1901, being Chapter 171, Volume 22, Laws of Delaware, The Mayor and Council of Wilmington, upon the recommendation of the Board of Park Commissioners, was authorized to borrow a sum or sums not exceeding in the aggregate Fifty Thousand Dollars to be applied and expended under the charge of the Board of Park Commissioners of the said City for the purpose of improving the parks;

AND WHEREAS, The said Board of Park Commissioners, has filed with The Council of The Mayor and Council of Wilmington its written recommendation requesting that The Mayor and Council of Wilmington provide for the borrowing of the sum of Ten Thousand Dollars to be expended under the charge of said Board for the purpose of improving the parks of said City;

THEREFORE, In pursuance of the power and authority vested in The Council by virtue of said Act of Assembly, and by virtue of said written recommendation of said Board of Park Commissioners,

BE IT ORDAINED, By the Council of Wilmington (two-thirds of all the members elected to The Council concurring herein):

SECTION 1. That as soon as practicable after the passage of this ordinance there shall be issued in the name of The Mayor and Council of Wilmington, bonds to the amount of Ten Thousand Dollars. Such bonds shall be issued each for the sum of Fifty Dollars or multiples thereof and shall fall due and become payable on the first day of October, A. D. 1930. Such bonds shall be denominated "Sinking Fund four per cent. loan," and shall bear interest at the rate of four per centum per annum payable semi-annually on the first days of April and October of each and every year after the date of the issue thereof and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other City bonds, and a record thereof shall be kept by the City Treasurer and City Auditor respectively.

Bonds to be issued for $10,000.

Sinking Fund. Rate, 4 per cent.

SEC. 2. The Finance Committee of The Council and the Commissioners of the Sinking Fund are hereby authorized and directed to sell and dispose of the bonds provided for by this ordinance to the highest and best bidder or bidders therefor, and to the best advantage of the City; and the proceeds of such sale shall be received by the City Treasurer, and the amount of the same (but not the premium arising therefrom), shall be by him made the subject of a special deposit in such bank at Wilmington as shall be the depository of the funds of the City and shall be drawn therefrom only upon the proper warrant of The Council for the purpose of improving the public parks of the City of Wilmington.

Sale of bonds.

Public parks.

Approved August 1, 1907.

AN ORDINANCE to Authorize The Mayor and Council of Wilmington to Borrow Five Thousand Dollars to be Applied and expended Under the Charge of the Board of Park Commissioners of the Said City for the Purpose of Improving the Public Parks.

WHEREAS, By an Act of the General Assembly of the

State of Delaware, entitled "A further supplement to an Act entitled An Act to provide for public parks for the use of the City of Wilmington and its vicinity," passed March 13th, 1883, approved March 29, 1905, being Chapter 163, Volume 23, Laws of Delaware, The Mayor and Council of Wilmington, upon the recommendation of the Board of Park Commissioners, was authorized to borrow a sum or sums not exceeding in the aggregate Twenty Thousand Dollars to be applied and expended under the charge of the Board of Park Commissioners of the said City for the purpose of improving the parks;

And Whereas, The said Board of Park Commissioners, has filed with The Council of The Mayor and Council of Wilmington its written recommendation requesting that The Mayor and Council of Wilmington provide for the borrowing of the sum of Five Thousand Dollars to be expended under the charge of said Board for the purpose of improving the parks of said City;

Therefore, In pursuance of the power and authority vested in The Council by virtue of said Act of Assembly, and by Virtue of said written recommendation of said Board of Park Commissioners,

Be it ordained, By The Council of Wilmington (two-thirds of all the members elected to The Council concurring herein):

Section 1. That as soon as practicable after the passage of this ordinance there shall be issued in the name of The Mayor and Council of Wilmington bonds to the amount of Five Thousand Dollars. Such bonds shall be issued each for the sum of Fifty Dollars or multiples thereof and shall fall due and become payable on the first day of October, A. D. 1930. Such bonds shall be denominated "Sinking Fund four per cent. loan," and shall bear interest at the rate of four per centum per annum payable semi-annually on the first days of April and October of each and every year after the date of the issue thereof and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same

Bonds to be issued for $5,000.

Sinking Fund. Rate, 4 per cent.

manner as other City bonds, and a record thereof shall be kept by the City Treasurer and City Auditor, respectively.

Sale of bonds.

SEC. 2. The Finance Committee of The Council and the Commissioners of the Sinking Fund are hereby authorized and directed to sell and dispose of the bonds provided for by this ordinance to the highest and best bidder or bidders therefor, and to the best advantage of the City; and the proceeds of such sale shall be received by the City Treasurer, and the amount of the same (but not the premiums arising therefrom), shall be by him made the subject of a special deposit in such bank at Wilmington as shall be the depository of the funds of the City and shall be drawn therefrom only upon the proper warrant of The Council for the purpose of improving the public parks of the City of Wilmington.

Public parks.

Approved August 1, 1907.

AN ORDINANCE to Authorize The Mayor and Council of Wilmington to Borrow Thirty Thousand Dollars to Pay for the Curbing, Guttering, Grading, Widening, Paving and Improving of Tenth Street Between Market and Tatnall Streets, in the City of Wilmington, Delaware.

WHEREAS, By Section 14, of an Act entitled "An Act to alter and re-establish the Statutes relating to the City of Wilmington," approved March 25th, A. D. 1907, The Council of The Mayor and Council of Wilmington was authorized to borrow in any one fiscal year for such municipal purpose or purposes as it should deem proper, a sum not exceeding Fifty Thousand Dollars, by ordinance passed by a vote of two-thirds of all the members elected to the Council;

AND WHEREAS, The Council has borrowed in the present fiscal year the sum of Twenty Thousand Dollars under said section for certain municipal purposes;

AND WHEREAS, The said The Council of The Mayor and Council of Wilmington proposes to borrow the sum of Thirty Thousand Dollars to pay for the curbing, guttering, grading,

widening, paving and improving of Tenth street between Market street and Tatnall street, in the City of Wilmington, Delaware;

THEREFORE, BE IT ORDAINED, By the Council of Wilmington (two-thirds of all the members elected to The Council concurring herein):

SECTION 1. That as soon as practicable after the passage of this ordinance there shall be issued in the name of The Mayor and Council of Wilmington, bonds to the amount of Thirty Thousand Dollars. Such bonds shall be issued each for the sum of Fifty Dollars or multiples thereof, and shall fall due and become payable as follows: Eight Thousand and Seven Hundred Dollars thereof on the first day of October, 1930; and Twenty-one Thousand and Three Hundred Dollars thereof on the first day of April, 1931.

Bonds to be issued for $30,000.

Maturity.

Such bonds shall be denominated "Sinking Fund four per cent. loan," and shall bear interest at the rate of four per centum per annum, payable semi-annually, on the first days of April and October in each and every year after the date of issue.

Rate, 4 per cent. Sinking Fund.

The bonds issued under the provisions of this ordinance shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other City bonds, and a record thereof shall be made and kept by the City Auditor and City Treasurer, respectively.

Execution of bonds.

SEC. 2. The Finance Committe of The Council and the Commissioners of the Sinking Fund are hereby authorized and directed to sell and dispose of the bonds provided for by this ordinance, in such manner as in their judgment will be to the best advantage of the City; and the proceeds of such sale shall be deposited to the credit of the Board of Directors of the Street and Sewer Department of the City of Wilmington in such bank or trust company as shall be the depository of the funds of said Board, and shall be withdrawn therefrom only on orders or warrants signed by the President of said

Sale of bonds.

Street and Sewer Department.

Board and countersigned by the City Treasurer and City Auditor.

Approved May 5, 1908.

AN ORDINANCE to Borrow Twenty Thousand Dollars, Fifteen Thousand Dollars of which Shall be Used for the Purpose of Purchasing Land for Park Purposes and Five Thousand Dollars of which Shall be Used for the Erection of a Bath House in or Near Kirkwood Park.

WHEREAS, By Section 14 of an Act entitled "An Act to alter and re-establish the statutes relating to the City of Wilmington," approved March 25th, A. D. 1907, The Council of The Mayor and Council of Wilmington was authorized to borrow in any one fiscal year from such municipal purpose or purposes as it should deem proper, a sum not exceeding Fifty Thousand Dollars by ordinance passed by a vote of two-thirds of all the members elected to The Council;

AND WHEREAS, A majority of the Board of Park Commissioners of the City of Wilmington have recommended to The Council that the sum of Fifteen Thousand Dollars be borrowed for the purchase or acquisition of lands for the purpose of opening and extending the area of the public parks of the City, and Five Thousand Dollars to be used towards the erection of a bath house in or near Kirkwood Park.

THEREFORE, BE IT ORDAINED, By The Council of Wilmington (two-thirds of all the members elected to The Council concurring herein):

SECTION 1. That as soon as practicable after the passage of this ordinance there shall be issued in the name of The Mayor and Council of Wilmington, bonds to the amount of Twenty Thousand Dollars. Such bonds shall be issued each for the sum of Fifty Dollars or multiples thereof, and shall fall due and become payable on the first day of October, 1930. Such bonds shall be denominated "Sinking Fund four per cent. loan," and shall bear interest at the rate of four per centum per annum, payable semi-annually on the first day of

Bonds to be issued for $20,000.

Maturity.

Sinking Fund.

Rate, 4 per cent.

April and October in each and every year after date of issue. The bonds issued under the provisions of this ordinance shall be signed by the Mayor and countersigned by the City Treasurer and the City Auditor in the same manner as other City bonds, and a record thereof shall be made and kept by the City Auditor and City Treasurer, respectively. Execution.

Sec. 2. The Finance Committee of The Council and the Commissioners of the Sinking Fund are hereby authorized and directed to sell and dispose of the bonds provided for by this ordinance to the highest and best bidder or bidders therefor and to the best advantage of the City; and the proceeds of such sale shall be received by the City Treasurer and the amount of the same (but not the premium arising therefrom), shall be by him made the subject of a special deposit in such bank at Wilmington as shall be the depository of the funds of the City, and shall be drawn therefrom only upon the proper warrant of The Council. Bonds to the amount of Fifteen Thousand Dollars shall be sold, the proceeds to be used for the purpose of purchasing land for park purposes and bonds to the amount of Five Thousand Dollars shall be sold, the proceeds to be used for the purpose of erection of a bath house in or near Kirkwood Park. Sale of bonds. Public parks. Bath house.

Approved February 10, 1908.

AN ORDINANCE to Borrow Twenty-five Thousand Dollars for the Completion and Operation of the Water Supply System of the City of Wilmington.

Whereas, By an Act of the General Assembly of the State of Delaware, approved March 29th, A. D. 1907, entitled "An Act to authorize the Mayor and Council of Wilmington to borrow Eight Hundred Thousand Dollars for the purpose of paying off any floating indebtedness and current liability in connection with the Water Works System of the City of Wilmington, and for defraying the cost of acquiring real estate and water rights and for the completion, construction, erection and equipment of new reservoirs, filter plants, pumping stations, pumping engines, pipes, mains and other appur-

tenances necessary for the completion and operation of the reservoir and filtration plants in connection with the extension of the Water Supply System of the City of Wilmington," the Mayor and Council of Wilmington was authorized and empowered to borrow, by ordinance of The Council, a sum not exceeding Eight Hundred Thousand Dollars, to be expended for the purpose of paying off any floating indebtedness and current liability in connection with the Water Works System of the City of Wilmington, and for defraying the cost of acquiring real estate and water rights; and for the completion, operation, construction, erection and equipment of new reservoirs, filter plants, pumping stations, pumping engines, pipes, mains and other appurtenances necessary for the completion and operation of the Water Supply System of the City of Wilmington; and for the purpose of securing the payment of such sum, to issue bonds in denominations of One Thousand Dollars each, bearing such rate of interest not exceeding four and one-half per centum as The Council of The Mayor and Council of Wilmington may deem expedient;

And Whereas, It was further provided in said Act that said bonds or any part thereof, may be sold when and as The Council of The Mayor and Council of Wilmington shall determine;

And Whereas, It was further provided in said Act that whenever the Board of Water Commissioners of the City of Wilmington shall deem it necesasry to have The Council sell any or all of said bonds, the said Board shall, by resolution, request The Council to issue any portion or all of said bonds;

And Whereas, The said Board of Water Commissioners in conformity with the provisions of said Act deeming it necessary to have all of said bonds issued and sold, has by resolution of said Board requested the said Council to issue and sell all of said bonds, said resolution having been presented to said Council and filed among the records thereof;

And Whereas, Classes "A" to "K," inclusive, of the bonds authorized to be issued under the provisions of said Act

of Assembly, aggregating Four Hundred and Thirty Thousand Dollars having been issued and sold, and such issue and sale duly authorized and ratified by ordinances and resolutions of The Council heretofore duly passed;

And Whereas, None of the bonds authorized to be issued and sold under the provisions of said Act of Assembly, with the exception of said Classes "A" to "K," inclusive, have been issued or sold by the said Council or the Finance Committee of said Council or by The Mayor and Council of Wilmington;

Therefore, In pursuance and by virtue of the power and authority of the Act of the General Assembly in that behalf;

Be it ordained, By the Council of Wilmington (two-thirds of all the members elected to The Council concurring herein):

Section 1. That as soon as practicable after the passage of this ordinance there shall be issued in the name of The name of the Mayor and Council of Wilmington in accordance with the provisions of the above recited Act of the General Asesmbly of the State of Delaware, bonds to the amount of Twenty-five Thousand Dollars in the aggregate, and the credit of The Mayor and Council of Wilmington is hereby pledged for the payment of both principal and interest in accordance with the terms of the aforesaid Act. Such bonds shall be issued for the sum of One Thousand Dollars each, and shall fall due and become payable as provided in the above recited Act of the General Assembly. Bonds to be issued for $25,000.

Said bonds shall be denominated "Wilmington Water Works Bonds," and shall bear interest at the rate of four per centum per annum, payable semi-annually on the first day of May and the first day of November in each and every year after the date of the issue thereof; and shall be signed by the Mayor of the City of Wilmington and under the seal of the City, and shall be countersigned by the City Treasurer and the City Auditor in the same manner as other City bonds; and Rate, 4 per cent.

Execution.

it shall be the duty of such officers to execute said bonds when directed by resolution of The Council to do so, and it shall also be the duty of the City Treasurer, City Auditor and the Board of Water Commissioners to keep a record of said bonds.

Sale of bonds.

SEC. 2. The Finance Committee of The Council is hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance to sell and dispose of said bonds to the highest and best bidder or bidders therefor, on the most advantageous terms possible, after having advertised the sale of the same in the public press at least once each week for at least two weeks, and the money received from the sale of said bonds shall be paid to the City Treasurer and shall be by him deposited to the credit of the Board of Water Commissioners in a separate account and payments therefrom shall be made in the same manner as other payments are made by the Board of Water Commissioners. The money so obtained and deposited shall be used by said Board of Water Commissioners as provided in said Act of the General Assembly; *provided* that the purchasers or holders of said bonds shall not be bound to see to or be affected by the application or mis-application of any of said money realized from the sale of said bonds.

Proceeds to Board of Water Commissioners.

SEC. 3. Said bond shall contain such provisions not inconsistent with the aforesaid Act of the General Assembly as shall secure to the holders thereof the payment of the principal and interest due thereon, according to the provisions of said Act of Assembly.

Approved August 11, 1908.

AN ORDINANCE to Authorize The Mayor and Council of Wilmington to Borrow Seventy-five Thousand Dollars for the Curbing, Guttering, Grading, Widening, Paving and Improving of Streets and Avenues and the Building of Sewers and Conduits in the City of Wilmington, Delaware.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "An Act to authorize The Mayor

and Council of Wilmington to borrow money for the curbing, guttering, grading, widening, paving and improving of streets and avenues and the building of sewers and conduits in the City of Wilmington, Delaware," approved March 4, A. D. 1907, The Mayor and Council of Wilmington was given power and authority to borrow money for the curbing, guttering, grading, widening, paving and improving of the streets, avenues, lanes or alleys and the building of sewers and conduits in the City of Wilmington, Delaware, in such amounts and at such times as the said The Mayor and Council of Wilmington should deem necessary to be borrowed and as said The Mayor and Council of Wilmington should by ordinance, prescribe and appoint; and to issue the bonds of said City in payment therefor with interest;

And Whereas, It is further provided by said Act that the Board of Directors of the Street and Sewer Department of The Mayor and Council of Wilmington, shall, before any moneys are so borrowed under the authority of said Act, prepare and present to The Council of the said The Mayor and Council of Wilmington, a list showing location and estimated cost of improvements as far as practicable, which improvements in the judgment of said Board of Directors of the Street and Sewer Department should be made;

And Whereas, The said Board of Directors of the Street and Sewer Department in conformity with the provisions of said Act, have prepared and presented to said The Council, a list showing the location, and the estimated cost of improvements, which in the judgment of said Board of Directors of the Street and Sewer Department should be made;

And Whereas, The said The Council of The Mayor and Council of Wilmington proposes to fix by ordinance the amount to be borrowed, basing said amount on the estimates submitted by the said Board of Directors of the Street and Sewer Department;

And Whereas, In the judgment of The Council, the sum of Seventy-five Thousand Dollars should be borrowed for the purposes recited in said Act;

Therefore, In pursuance and by virtue of the power and authority vested in The Council by said Act of the General Assembly of the State of Delaware in that behalf.

Be it ordained, By the Council of Wilmington (two-thirds of all the members elected to The Council concurring herein):

Section 1. That immediately after the passage of this ordinance there shall be issued in the name of The Mayor and Council of Wilmington, in accordance with the provisions of the above recited Act of the General Assembly of the State of Delaware, bonds to the amount of Seventy-five Thousand Dollars; such bonds shall be issued each for the sum of Fifty Dollars ($50.00) or multiples thereof and shall fall due and become payable as follows:

Bonds to be issued for $75,000.

Maturities.

Sixty-eight Thousand Two Hundred Dollars thereof on the first day of April, A. D. 1931; and Sixty-eight Hundred Dollars thereof on the first day of October, A. D. 1931.

Rate, 4 per cent.

Said bonds shall be denominated "Sinking Fund Four Per Cent. Loan" and shall bear interest at the rate of four per centum per annum, payable semi-annually on the first day of April and the first day of October in each and every year after the date of the issue thereof, and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other city bonds are signed and a record thereof shall be kept by the City Treasurer and City Auditor, respectively.

Sec. 2. The Finance Committee of The Council and the Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance, to sell and dispose of any part or all of the said bonds in such amount or amounts as the Finance

Sale of bonds.

Committee of The Council shall determine to the highest and best bidder or bidders therefor and to the best advantage of the city. The moneys so borrowed shall be paid into the city treasury, and upon receipt of the same by the City Treasurer, he shall deliver the amount of the same to the Board of Directors of the Street and Sewer Department of the said City of Wilmington, which said Board shall have supervision, management, direction and control of the work required to be done with the proceeds of the sale of said bonds and the expenditure of the money necessary with respect thereto; *provided, however,* that the purchasers or holders of the bonds to be issued under the provisions of this ordinance shall in no wise be responsible for the application or misapplication of the funds realized from the sale of said bonds.

Sec. 3. All moneys borrowed under the provisions of this ordinance shall be placed or deposited by the Board of Directors of the Street and Sewer Department of the said City of Wilmington in such bank or trust company in the City of Wilmington as shall be the depository of the funds of such Board, and no warrant or order for the payment of money shall be drawn against said funds except such warrant or order is for payment for work done or materials furnished or implements used upon or about the improvement or improvements provided for in said Act of the General Assembly, or for the curbing, guttering, grading, widening, paving and improving of the streets, avenues, lanes or alleys and the building of sewers and conduits in the City of Wilmington, Delaware.

Proceeds to Street and Sewer Department.

All orders or warrants for the payment of money to be drawn against said funds shall be signed by the President of said Board and countersigned by the City Treasurer and City Auditor.

Approved August 11, 1908.

AN ORDINANCE to authorize The Mayor and Council of Wilmington to borrow Twenty-five Thousand Dollars for the curbing, guttering, grading, widening, paving and improving of streets and avenues and the building of sewers and conduits in the City of Wilmington, Delaware.

WHEREAS, By an Act of the General Assembly of the State of Delaware entitled "An Act to authorize The Mayor and Council of Wilmington to borrow money for the curbing, guttering, grading, widening, paving and improving of streets and avenues and the building of sewers and conduits in the City of Wilmington, Delaware," approved March 4, A. D. 1907, The Mayor and Council of Wilmington was given power and authority to borrow money for the curbing, guttering, grading, widening, paving and improving of the streets, avenues, lanes or alleys and the building of sewers and conduits in the City of Wilmington, Delaware, in such amounts and at such times as the said The Mayor and Council of Wilmington should deem necessary to be borrowed and as said The Mayor and Council of Wilmington should by ordinance, prescribe and appoint; and to issue the bonds of said city in payment therefor with interest;

AND WHEREAS, It is further provided by said Act that the Board of Directors of the Street and Sewer Department of The Mayor and Council of Wilmington, shall, before any moneys are so borrowed under the authority of said Act, prepare and present to The Council of the said The Mayor and Council of Wilmington a list showing location and estimated cost of improvements as far as practicable which improvements in the judgment of said Board of Directors of the Street and Sewer Department should be made;

AND WHEREAS, The said Board of Directors of the Street and Sewer Department in conformity with the provisions of said Act, have prepared and presented to said The Council a list showing the location, and the estimated cost of improvements, which in the judgment of said Board of Directors of the Street and Sewer Department should be made;

And Whereas, The said The Council of The Mayor and Council of Wilmington proposes to fix by ordinance the amount to be borrowed, basing said amount on the estimates submitted by the said Board of Directors of the Street and Sewer Department;

And Whereas, In the judgment of The Council, the sum of Twenty-five Thousand Dollars should be borrowed for the purposes recited in said Act;

Therefore, In pursuance and by virtue of the power and authority vested in The Council by said Act of the General Assembly of the State of Delaware in that behalf,

Be it ordained by The Council of Wilmington (two-thirds of all the members elected to The Council concurring herein):

Section 1. That immediately after the passage of this ordinance there shall be issued in the name of The Mayor and Council of Wilmington, in accordance with the provisions of the above recited Act of the General Assembly of the State of Delaware, bonds to the amount of Twenty-five Thousand Dollars; such bonds shall be issued each for the sum of Fifty Dollars ($50.00) or multiples thereof and shall fall due and become payable on the first day of October, A. D. 1931.

Bonds to be issued for $25,000.

Said bonds shall be denominated "Sinking Fund Four Per Cent. Loan," and shall bear interest at the rate of four per centum per annum, payable semi-annually on the first day of April and the first day of October in each and every year after the date of the issue thereof, and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other city bonds are signed, and a record thereof shall be kept by the City Treasurer and City Auditor, respectively.

Rate, 4 per cent.

Sec. 2. The Finance Committee of The Council and the Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of the bonds provided

Sale of bonds.

for by this ordinance, to sell and dispose of any part or all of the said bonds in such amount or amounts as the Finance Committee of The Council shall determine to the highest and best bidder or bidders therefor and to the best advantage of the city. The moneys so borrowed shall be paid into the city treasury, and upon receipt of the same by the City Treasurer, he shall deliver the amount of the same to the Board of Directors of the Street and Sewer Department of the said City of Wilmington, which said Board shall have supervision, management, direction and control of the work required to be done with the proceeds of the sale of said bonds and the expenditure of the money necessary with respect thereto; *provided, however,* that the purchasers or holders of the bonds to be issued under the provisions of this ordinance shall in no wise be responsible for the application or misapplication of the funds realized from the sale of said bonds.

Proceeds to Street and Sewer Department.

SEC. 3. All moneys borrowed under the provisions of this ordinance shall be placed or deposited by the Board of Directors of the Street and Sewer Department of the said City of Wilmington in such bank or trust company in the City of Wilmington as shall be the depository of the funds of such Board, and no warrant or order for the payment of money shall be drawn against said funds except such warrant or order is for payment for work done or materials furnished or implements used upon or about the improvement or improvements provided for in said Act of the General Assembly, or for the curbing, guttering, grading, widening, paving and improving of the streets, avenues, lanes or alleys and the building of sewers and conduits in the City of Wilmington, Delaware.

Limitation as to expenditure.

Warrants.

All orders or warrants for the payment of money to be drawn against said funds shall be signed by the President of said Board and countersigned by the City Treasurer and City Auditor.

Approved August 27, 1908.

AN ORDINANCE to authorize The Mayor and Council of Wilmington to borrow Two Hundred and Fifty Thousand Dollars for the curbing, guttering, grading, widening, paving and improving of streets and avenues and the building of sewers and conduits in the City of Wilmington, Delaware.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "An Act to authorize The Mayor and Council of Wilmington to borrow money for the curbing, guttering, grading, widening, paving and improving of streets and avenues and the building of sewers and conduits in the City of Wilmington, Delaware," approved March 4th, A. D. 1907, The Mayor and Council of Wilmington was given power and authority to borrow money for the curbing, guttering, grading, widening, paving and improving of the streets, avenues, lanes or alleys and the building of sewers and conduits in the City of Wilmington, Delaware, in such amounts and at such times as the said The Mayor and Council of Wilmington should deem necessary to be borrowed and as said The Mayor and Council of Wilmington should by ordinance prescribe and appoint; and to issue the bonds of said city in payment therefor with interest;

AND WHEREAS, It is further provided by said Act that the Board of Directors of the Street and Sewer Department of The Mayor and Council of Wilmington, shall, before any moneys are so borrowed under the authority of said Act, prepare and present to The Council of the said The Mayor and Council of Wilmington, a list showing location and estimated cost of improvements as far as practicable, which improvements in the judgment of said Board of Directors of the Street and Sewer Department should be made;

AND WHEREAS, The said Board of Directors of the Street and Sewer Department in conformity with the provisions of said Act, has prepared and presented to said The Council a list showing the location and the estimated cost of improvements, which in the judgment of said Board of Directors of the Street and Sewer Department should be made;

And Whereas, The said The Council of The Mayor and Council of Wilmington proposes to fix by ordinance the amount to be borrowed for said improvements, basing said amount on the estimates submitted by the said Board of Directors of the Street and Sewer Department;

And Whereas, In the judgment of The Council, the sum of Two Hundred and Fifty Thousand Dollars should be borrowed for the purposes above recited and authorized by said Act;

Therefore, In pursuance and by virtue of the power and authority vested in The Council by said Act of the General Assembly of the State of Delaware in that behalf;

Be it ordained, by The Council of Wilmington.

Section 1. That immediately after the passage of this ordinance, there shall be issued in the name of The Mayor and Council of Wilmington, in accordance with the provisions of the above recited Act of the General Assembly of the State of Delaware, bonds to the amount of Two Hundred and Fifty Thousand Dollars; such bonds shall be issued each for the sum of Fifty Dollars ($50.00) or multiples thereof, and shall fall due and become payable as follows: Sixty Thousand Two Hundred Dollars on October 1, 1931; Ninety-four Thousand Seven Hundred and Fifty Dollars on April 1, 1932; and Ninety-five Thousand and Fifty Dollars on October 1, 1932.

Bonds to be issued for $250,000.

Said bonds shall be denominated "Sinking Fund Four Per Cent. Loan," and shall bear interest at the rate of four per centum per annum payable semi-annually on the first day of April and the first day of October in each and every year after the date of the issue thereof; and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other city bonds are signed, and a record thereof shall be kept by the City Treasurer and City Auditor, respectively.

Sinking Fund.

Rate, 4 per

SEC. 2. The Finance Committee of The Council and the Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of the bonds provided for by this ordinance, to sell and dispose of any part or all of the said bonds in such amount or amounts as the Finance Committee of The Council shall determine, to the highest and best bidder or bidders therefor, and to the best advantage of the city. The moneys so borrowed shall be paid into the city treasury, and upon receipt of the same by the City Treasurer, he shall deliver the amount of the same to the Board of Directors of the Street and Sewer Department of the said City of Wilmington, which said Board shall have supervision, management, direction and control of the work required to be done with the proceeds of the sale of said bonds and the expenditure of the money necessary with respect thereto; *provided, however,* that the purchasers or holders of the bonds to be issued under the provisions of this ordinance shall in no wise be responsible for the application or misapplication of the funds realized from the sale of said bonds.

Sale of bonds.

Proceeds to Street and Sewer Department.

SEC. 3. All moneys borrowed under the provisions of this ordinance shall be placed or deposited by the Board of Directors of the Street and Sewer Department of the said City of Wilmington in such bank or trust company in the City of Wilmington as shall be the depository of the funds of such Board, and no warrant or order for the payment of money shall be drawn against said funds except such warrant or order is for payment for work done or materials furnished or implements used upon or about the improvement or improvements provided for in said Act of the General Assembly, or for the curbing, guttering, grading, widening, paving and improving of the streets, avenues, lanes or alleys and the building of sewers and conduits in the City of Wilmington, Delaware.

Limitation of expenditure.

All orders or warrants for the payment of money to be drawn against said funds, shall be signed by the President of said Board and countersigned by the City Treasurer and City Auditor.

Warrants.

Approved April 2, 1909.

AN ORDINANCE to authorize The Mayor and Council of Wilmington to borrow Twenty-five Thousand Dollars to pay for the extension of the Park System of the City of Wilmington, and for the improvement of the parks of said City.

WHEREAS, By Section 14 of an Act of the General Assembly of the State of Delaware, entitled "An Act to alter and reestablish the Statutes relating to the City of Wilmington," approved March 25, A. D. 1907, The Council of The Mayor and Council of Wilmington was authorized to borrow in any one fiscal year for such municipal purpose as it should deem proper, a sum not exceeding Fifty Thousand Dollars, by ordinance passed by a vote of two-thirds of all the members elected to Council;

AND WHEREAS, The Council has not borrowed during the present fiscal year, any money under the provisions of said section;

AND WHEREAS, The said The Council of The Mayor and Council of Wilmington proposes to borrow the sum of Twenty-five Thousand Dollars to pay for the maintenance, care, extension and improvement of the Park System of said city;

THEREFORE BE IT ORDAINED, by The Council of Wilmington, (two-thirds of all the members elected to The Council concurring herein):

SECTION 1. That as soon as practicable after the passage of this ordinance there shall be issued in the name of The Mayor and Council of Wilmington, bonds to the amount of Twenty-five Thousand Dollars. Such bonds shall be issued each for the sum of Fifty Dollars or multiples thereof, and shall fall due and become payable as follows: Two Thousand Five Hundred and Fifty Dollars thereof on the first day of October, 1932; and Twenty-two Thousand Four Hundred and Fifty Dollars thereof on the first day of April, 1933.

Bonds to be issued for $25,000.

Such bonds shall be denominated "Sinking Fund Four Per Cent. Loan," and shall bear interest at the rate of four

Sinking Fund. Rate, 4 per cent.

per centum per annum, payable semi-annually on the first days of April and October in each and every year after the date of issue.

The bonds issued under the provisions of this ordinance shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other city bonds, and a record thereof shall be made and kept by the City Auditor and City Treasurer, respectively.

SEC. 2. The Finance Committee of The Council and the Commissioners of the Sinking Fund are hereby authorized and directed to sell and dispose of the bonds provided for by this ordinance, in such manner as in their judgment will be to the best advantage of the city; and the proceeds of such sale shall be deposited to the credit of the Board of Park Commissioners of the City of Wilmington, and shall be withdrawn therefrom only on orders or warrants signed in the manner provided by law. None of the money thus secured shall be used for any purpose other than to pay for the maintenance, care, extension and improvement of the Park System of said City of Wilmington. Sale of bonds. Public parks.

Approved April 12, 1909.

AN ORDINANCE ratifying the sale of One Hundred Thousand Dollars Water Bonds of the City of Wilmington to be issued pursuant to the authority of "An Ordinance to borrow Eight Hundred Thousand Dollars for the completion and operation of the Water Supply System of the City of Wilmington," passed April 25th, 1907, fixing the form of said bonds, and authorizing the issuance and delivery thereof.

WHEREAS, Pursuant to the authority of an Act of the General Assembly of the State of Delaware, approved March 29th, A. D. 1907, entitled "An Act to authorize The Mayor and Council of Wilmington to borrow Eight Hundred Thousand Dollars for the purpose of paying off any floating indebtedness and current liability in connection with the Water

Works System of the City of Wilmington, and for defraying the cost of acquiring real estate and water rights; and for the completion, construction, erection and equipment of new reservoirs, filter plants, pumping stations, pumping engines, pipes, mains and other appurtenances necessary for the completion and operation of the reservoir and filtration plants in connection with the extension of the Water Supply System of the City of Wilmington," an ordinance was duly adopted by the Council of the city, April 25th, 1907, entitled "An ordinance to borrow Eight Hundred Thousand Dollars for the completion and operation of the Water Supply System of the City of Wilmington," authorizing the issuance of $800,000 Water Bonds to be issued in the classes and amounts set forth in said act, and authorizing the Finance Committee of the Council to sell and dispose of all or any part of said bonds;

And Whereas, Pursuant to the authority of said Act and ordinance, there have been heretofore issued and sold bonds to the amount of $430,000 being Classes "A" to "K" inclusive, and $25,000 of Class "L;"

And Whereas, The Board of Water Commissioners by a resolution adopted January 11th, 1909, requested the Council to sell the remainder of said bonds so authorized and has duly presented to the Council a copy of such resolution;

And Whereas, The Council by a resolution duly adopted March 18th, 1909, directed the Finance Committee to advertise and sell $100,000 of said bonds;

And Whereas, Pursuant to said ordinance of April 25th, 1907, and to said resolution of March 18th, 1909, the Finance Committee offered for sale $100,000 of said bonds, $25,000 thereof being Class "L" and maturing May 1st, 1921; $60,000 Class "M" and maturing May 1st, 1922; and $15,000 Class "N" maturing May 1st, 1923, on the 28th day of April, 1909, and caused a notice of such sale to be advertised in the public press at least once each week for at least two weeks prior to said 28th day of April, 1909, and at said sale awarded said bonds to The Equitable Guarantee and Trust Company of

Wilmington, Delaware, the highest and best bidder therefor at their bid of 101.110 Dollars and accrued interest.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Wilmington (two-thirds of all members elected to the Council concurring therein):

SECTION 1. That the sale and award of said bonds to said The Equitable and Trust Company at their bid of 101.110 Dollars for One Hundred Thousand Dollars par value thereof and accrued interest, be and the same is hereby ratified and approved. Sale of bonds ratified and approved.

SEC. 2. That said bonds be signed by the Mayor, Treasurer and Auditor of the city and bear the corporate seal of the city and that the coupons attached to said bonds be signed with the fac simile signature of the City Treasurer; said bonds to be dated May 1st, 1907, to bear interest at the rate of four (4%) per centum per annum, payable semi-annually on the first days of May and November, and be payable $25,000 thereof, being part of Class "L," on May 1st, 1921; $60,000, being Class "M," on May 1st, 1922; and $15,000, being part of Class "N," on May 1st, 1923; said bonds shall be substantially in the same form as the bonds heretofore issued pursuant to said ordinance passed April 25th, 1907, as follows: Execution. Rate, 4 per cent.

UNITED STATES OF AMERICA,

No. Class

STATE OF DELAWARE,

$1,000 $1,000

CITY OF WILMINGTON.

WILMINGTON WATER WORKS BOND.

The Mayor and Council of Wilmington, Delaware, for value received hereby acknowledges its indebtedness and promises to pay to the bearer of this bond, or if this bond be registered, to the registered holder thereof, his legal representatives, successors or assigns, at Union National Bank, Wil- Form of bond.

mington, Delaware, on the first day of May, A. D. 19 , the sum of

ONE THOUSAND DOLLARS

with interest thereon at the rate of four per centum per annum payable semi-annually on the first days of May and November in each year upon the surrender of the annexed coupons as they become due, or if this bond be registered, to the registered holder thereof.

Both principal and interest are payable in gold coin of the United States of America equal in weight and fineness to the present standard.

This bond is one of the authorized issue of eight hundred (800) bonds, numbered from 201 to 1,000, inclusive, aggregating Eight Hundred Thousand Dollars ($800,000), issued by virtue of and in compliance with an Act of the General Assembly of the State of Delaware, approved March 29th, 1907, entitled "An Act to authorize The Mayor and Council of Wilmington to borrow Eight Hundred Thousand Dollars for the purpose of paying off any floating indebtedness and current liability in connection with the Water Works System of the City of Wilmington, and for defraying the cost of acquiring real estate and water rights; and for the completion, construction, erection and equipment of new reservoirs, filter plants, pumping stations, pumping engines, pipes, mains and other appurtenances necessary for the completion and operation of the reservoir and filtration plants in connection with the extension of the Water Supply System of the City of Wilmington," and in pursuance of an ordinance of The Council of Wilmington, passed April 25th, 1907, entitled "An ordinance to borrow Eight Hundred Thousand Dollars for the completion and operation of the Water Supply System of the City of Wilmington."

Upon presentation to the City Treasurer this bond may be registered in books to be kept for that purpose in the office of said Treasurer and the coupons hereto annexed detached and cancelled, and thereafter this bond shall be transferable only upon said books by the registered holder in person or by

attorney lawfully authorized, and the principal and interest of this bond shall be payable to the registered holder.

It is hereby certified that this bond is one of the issue authorized by the above recited Act of Assembly; that all conditions, acts and things essential to the validity of this bond exist, have happened and have been done; that every requirement of law affecting the issue thereof has been duly complied with; that the indebtedness of said The Mayor and Council of Wilmington, including this issue of bonds is within every debt and other limit prescribed by the Constitution and Laws of the State of Delaware; and that the faith and credit of The Mayor and Council of Wilmington are pledged for the punctual payment of the principal and interest of this bond according to its terms.

IN WITNESS WHEREOF, the signatures of the Mayor, City Treasurer and City Auditor of the City of Wilmington are hereto subscribed and the corporate seal of the said city is hereto affixed this first day of May, A. D. 1907.

.....,
Mayor.

.....,
Treasurer.

.....
Auditor.

(Form of Coupon.)

Form of coupon.

On the first day of , A. D. 19 , The Mayor and Council of Wilmington will pay to the bearer $20 at Union National Bank, Wilmington, Delaware,

TWENTY DOLLARS

in gold coin of the United States of America, equal in weight

and fineness to the present standard, being six months' interest then due on Wilmington Water Works Bond No. , dated the first day of May, A. D. 1907.

Class

.....

City Treasurer.

Coupon No.

(Form of Endorsement to be Placed on Back.)

Registration.

CERTIFICATE OF REGISTRATION.

At the request of the holder of the within bond for its conversion into a registered bond it is hereby certified that I have this day cut off and destroyed ..... coupons attached to said bond, numbered from ..... to ..... of the amount and value of Twenty ($20) Dollars each, amounting in the aggregate to ..... Dollars ($), and that the within bond is hereby converted into a registered bond with the principal thereof and semi-annual interest thereon payable to ..... or ..... assignee or legal representative.

Dated ....., 19..

.....

City Treasurer.

Date of Registry	In Whose Name Registered	City Treasurer

Execution of bonds.

SEC. 3. That the Mayor, City Auditor and Treasurer be and they hereby are authorized and directed to execute said bonds and deliver the same to said purchaser upon payment of the purchase price therefor as aforesaid.

Approved May 7, 1909.

AN ORDINANCE to provide for the borrowing of Ninety Thousand Dollars ($90,000.00) for the purpose of defraying the expense of the construction of a sewer to be known as the Price's Run Sewer, situate in the Ninth Ward of the City of Wilmington.

Preamble.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "An Act to Protect the Health of the Citizens of Wilmington," approved the twenty-sixth day of March, A. D. 1903, the Mayor and Council of Wilmington was authorized and empowered to borrow by ordinance of the Council of Wilmington, the sum of Ninety Thousand Dollars ($90,000.00) to be appropriated, applied and expended, through the agency and in the discretion of the Board of Directors of the Street and Sewer Department of the City of Wilmington, to purchase land for, and to lay and construct a trunk line sewer to be known as the Price's Run Sewer, situate in the Ninth Ward of the said City of Wilmington;

AND WHEREAS, It was further provided by said Act that any and all sums of money borrowed under the authority of said Act should be borrowed by the Mayor and Council of Wilmington at such times and in such amounts as the said Board of Directors of the Street and Sewer Department may decide and direct;

AND WHEREAS, The said Board of Directors of the Street and Sewer Department in conformity with the provisions of said Act, have filed a written request or direction, wherein said Board directs the Mayor and Council of Wilmington to provide for the immediate borrowing of Ninety Thousand Dollars ($90,000.00), for the purposes aforesaid, and to authorize the issuance of bonds of the said Mayor and Council of Wilmington for the payment of the sum of money so to be borrowed, which said request or direction has been presented to the Council and filed among the records thereof;

THEREFORE, in pursuance and by virtue of the power and authority of the Act of the General Assembly in that behalf.

BE IT ORDAINED, by the Council of Wilmington.

SECTION 1. That immediately after the passage of this ordinance there shall be issued in the name of the Mayor and Council of Wilmington, bonds to the amount of Ninety Thousand Dollars ($90,000.00); said bonds shall be issued each for the sum of Fifty Dollars ($50.00) or multiples thereof, one or more of said bonds or certificates of indebtedness for the sum of Fifty-five Thousand Dollars ($55,000.00) shall fall due and be payable on the first day of October, A. D. one thousand nine hundred and twenty-seven, and one or more of said bonds or certificates of indebtedness for the sum of Thirty-five Thousand Dollars ($35,000.00) shall fall due and be payable on the first day of April, A. D. one thousand nine hundred and twenty-eight. Such bonds shall be denominated "Sinking Fund Four Per Cent. Loan," and shall bear interest at the rate of four per centum per annum, payable semi-annually on the first day of April and the first day of October in each year and every year after the date of the issue thereof, and shall be signed by the Mayor and countersigned by the City Treasurer and City Auditor in the same manner as other city bonds, and the record thereof kept by the City Treasurer and City Auditor, respectively.

Bonds to be issued for $90,000.

Maturity.

Sinking Fund. Rate, 4 per cent.

SEC. 2. The Finance Committee of Council and the Commissioners of the Sinking Fund are hereby authorized and directed immediately after the issuance of said bonds, provided for by this ordinance, to sell and dispose of the same to the highest and best bidder, therefor, and to the best advantage of the city, and the proceeds of such sale, but not the premium arising therefrom, shall be received by the said Board of Directors of the Street and Sewer Department, and shall be placed upon special deposit to the credit of the said Board of Directors, in such bank or trust company in the City of Wilmington, as shall be determined upon by said Board. All orders or warrants for the payment of money to be drawn against said fund, shall be signed by the President of said Board and countersigned by the City Treasurer and City Auditor, and no warrant or order for the payment of money shall

Sale of bonds.

Proceeds to Street and Sewer Department.

Limitation on expenditures.

be drawn against such funds, except such order or warrant is for payment for land, water-rights, material or labor, as provided in said Act.

Approved May 14, 1903.

CHAPTER VII

ORDINANCES RELATING TO NUISANCES.

		Page			Page
1.	Offences Against Public Economy and Nuisances..	742	5.	Loitering on Sidewalks....	761
2.	Supplement to Foregoing Ordinance	758	6.	Spitting on Sidewalks.....	764
3.	Defining Certain Nuisances	759	7.	Concerning Swine	764
4.	Signs Over Sidewalks.....	760	8.	Private Alley-ways	766
			9.	Smoking Opium	767

AN ORDINANCE concerning offences against the public economy and certain nuisances.

Footways clear for persons walking.

SECTION 1. The paved and other footways of the streets, lanes and alleys of this city shall be kept clear for the safe and convenient passage of persons walking. (*a*)

(*a*) The above section *expressly* makes it the duty of the city to keep the footways, &c., "clear for the safe and convenient passage of persons walking." The city's duty would be the same regardless of the above provision.

Lore, C. J.: "It has been well said by our courts, that the traveler is not bound to hunt for obstructions or pitfalls in the public streets. It is the duty of the city to keep such streets in a reasonably good condition and repair at all times. The traveler has a right to presume, that this duty has been performed, and that the streets are so fit for use."

Anderson vs. Mayor and Council of Wil., 2 Penn. 28 at 30. (yr. 1899)

And it is not necessary, to make the city liable, that the footways should be paved.

Cullen, J.: "If the city allow and throw open to use a footway used by the public, it is not necessary that it should be paved, but the city is as much bound to keep such a passageway safe in the outskirts of the city, and fronting on lots not built upon, as in the crowded thoroughfares. It is true that greater care would be required in most frequented streets," &c.

Seward vs. Wilmington, 2 Marv. 189 at 202. (yr. 1896)

(See Sec. 121, "b" of the Charter, where a list of cases is given.)

Riding, driving, or placing beast or wagon on footways.

If any person shall willfully ride, drive, lead or place a horse, cow, beast of burden, or any cattle, or a wagon, cart, gig or other carriage on the paved or other footway of any street, lane or alley of this city, except in passing directly to

or from a stable, carriage house, yard or other proper place for a lawful purpose, with as little delay as reasonably practicable, every such person so offending shall forfeit and pay a fine of ten dollars. Penalty.

If any person shall saw, cut, split or break wood or coal on any such paved or other footway, or if any person shall without lawful permission put wood, coal, goods, lumber, dirt or other thing on any such paved or other footway, except in carrying or moving the same to or from a cellar, store, house or other proper place directly and with as little delay and inconvenience as reasonably practicable; or if any person shall otherwise obstruct any such paved or other footway, every person offending in either of the ways last aforesaid shall for every such offence forfeit and pay a fine of one dollar. Cutting or putting wood, coal or other obstruction on footways.

Repealed by Board of Directors of the Street and Sewer Department, May 23, 1893.

* * * * * * * * * *

Any shopkeeper or other person shall be at liberty, for the purpose of exhibiting to view (*a*) goods or things for sale, to occupy a space of any paved or other footway adjoining his or her shop or premises, and not extending more than four feet from the wall of such shop or premises, except in streets, lanes and alleys where this liberty would not leave five feet of the footway clear, and in such streets, lanes and alleys there shall be no liberty to occupy more of the footway than will leave five feet thereof clear. Exhibition of goods. Limit.

(*a*) See Sec. 7, p. 823, and Sec. 12, p. 826 of the Charter, Laws and Ordinances.

Goods may be exposed to sale by way of public vendue on the footways, using no more thereof than requisite for the occasion. Public vendue on footways.

Sec. 2. It shall not be lawful for any person or persons to erect or have any booth, stand, stall or place in or upon any of the footways, streets, lanes, alleys or market houses of this city for the purpose of exposing or offering for sale any goods, wares or merchandise whatsoever. (*a*) No booths, stands, stalls, etc., on sidewalks.

(*a*) See Sec. 7, p. 823 of the Charter, Laws and Ordinances.

Clerk of Market to report violations.

It shall be the duty of the Clerk of the Markets to take notice of all violations of this section, and report the same without delay to the Mayor (*a*) of the said city.

(*a*) When the above ordinance was passed it was made the duty of the Mayor (as it is today), "to take care to have the laws and ordinances of said city faithfully executed." (Sec. 7 of the Charter.) The Mayor also "held Court," and violators of the market laws were thus quickly reached and punished.

The Street and Sewer Department, now, has jurisdiction *over* the markets.

(Secs. 1 and 4 of Street and Sewer Act, pp. 224 and 228 of Charter, Laws and Ordinances), and The Council receives the *revenues* from the markets.

Street and Sewer Department vs. Connell, 2 Penn. 571. (yr. 1900)

Fine.

Every person offending against the provisions of this section shall forfeit and pay a fine of five dollars.

Wagons, etc., standin the streets.

SEC. 3. If any person shall place or leave in any street or public lane or alley of this city a wagon, cart, gig, sleigh or other carriage without a horse or beast, used for drawing the same, attached thereto, or shall without lawful permission obstruct (*a*) any open and public street, lane or alley of this city, every person so offending shall forfeit and pay a fine of two dollars.

Penalty.

(*a*) A street railway car may be permitted to stand on one of the "turnouts" waiting for another car to pass it, without "obstructing" the street.

Robinson, C. J.: "* * we do not think the ordinance cited * * deprives them of that right."

Ford vs. Warner Co., 1 Marv. 88 at 92. (yr. 1893)

In the case below cited, the above section is set out verbatim, and the Court held, that under said section, one sledding on any of the streets of the city could be arrested for "obstructing" the streets.

Wolcott, Ch.: "It cannot be pretended that those persons engaged in the sport of coasting at the time mentioned * * could not have been arrested, tried, convicted and punished for a violation of said ordinance," &c.

Mayor and Council of Wil. vs. Vandegrift, 1 Marv. 5 at 19. (yr. 1893)

Market wagons excepted.

This provision shall not affect the privileges granted by ordinance to persons attending market for the sale of produce or other articles. Nor shall this provision or any part of this or any other ordinance relating to the obstruction of public streets be construed to apply to those who, under lease from

Ends of streets excepted.

this corporation, are occupying and using the ends of public streets upon the Christiana or Brandywine creeks.

Repealed, Resolution of Street and Sewer Department, July 19, 1892.

* * * * * * * * * *

Driving to right hand side.

If any person driving a horse, horses, beast or beasts of burden, in a coach, wagon, gig, or other carriage of pleasure or burden, in any street, lane or alley of this city, shall not keep on the right (*a*) hand side of the street, lane or alley, in the passing direction, and shall in consequence occasion inconvenience (*b*) to any person; or, if any person shall drive or ride any horse, horses, or beast, or beasts of burden in any street, lane or alley of this city in an immoderate gait; (*c*) or, if any person shall willfully suffer a horse, [or horse kind, ass, mule, goat, sheep, [goose, swine,] kine or neat beast] belonging to or in care of such person to go at large in any street, lane or alley, open lot, square or public place within the [corporate limits of the City of Wilmington,] every person so offending shall forfeit and pay a fine of two dollars.

Driving at immoderate gait.

Jan. 31, 1867.

Amendments, Ordinance Sept. 3, 1891.

Animals prohibited from going at large.

(*a*) *Comegys, C. J.*: "The law of this State is, and has been, for a long time, that when two persons driving upon the public road, are approaching each other, each shall keep to the right, then there will never be a collision between them."

Shockley vs. Shepherd, 9 Houst. 270 at 271. (yr. 1891)

Wilson vs. Rockland Manufacturing Co., 2 Har. 67 at 70. (yr. 1836)

The Court: "* * and if a person is found on the left, or wrong side when an accident occurs, he is liable for the consequences unless its cause be wholly attributable to the other party, and he does all that prudence can do to avoid damage."

Reynolds vs. Naudain, 2 Har. 317 at 318. (yr. 1837)

The law where a person attempts to "pass" another on the road, is as follows:

Lore, C. J.: "The law upon this question has been very clearly laid down in the case of McLain vs. Sharp, 2 Har. 483: "Where one undertakes to pass another, he who passes undertakes to go by at his own peril, if the other carriage leaves him road enough; and even when a horse in a gig has balked or stopped on the highway, the driver of a carriage behind, wishing to pass, is bound to stop if there be not road enough left for both carriages. For although every man has a right to pass on the public road, yet he must take reasonable care to exercise that right so as not to injure another."

State vs. Lewis, 4 Penn. 332 at 335. (yr. 1903)

(*b*) While it is one's duty to "keep to the right," yet the penalty under the ordinance, for failing to observe the rule, only applies in case one should "*occasion inconvenience to any person*," thereby. The law in general, as to carriages and vessels, is as follows:

Booth, C. J.: "The law of the road is, that where two carriages meet on the public road, to avoid collision, each shall keep to the right. So, in reference to steamboats meeting each other head

on, and there is not room to pass without changing course, each should go to the right. But in either case, if there be room to pass, a carriage or boat, though on the wrong side of the road or river, is *not bound* to go entirely out of her track to get around another carriage or vessel which is so far out of her direct route, that, by keeping right on, would cause no collision to either, *merely in order to pass to the right.*''

Steamboat Co. vs. Whilliden, 4 Har. 228 at 231-2. (yr. 1845)

(*c*) This provision applies to driving or riding at ''an immoderate gait.'' The law, in general, is briefly expressed as follows:

The Court: ''And in travelling every man is bound to restrain his speed within such bounds as will not endanger others, considering *the place and circumstances.*''

Reynolds vs. Naudain, 2 Har. 317 at 318. (yr. 1837)

See Robinson vs. Simpson, 8 Houst. 398 at 407. (yr. 1889) (A case of fast driving under the ordinance.)

As to *racing*, see paragraph 9, ''a'' of this section.

Drivers must hold the reins or be near their horses, etc.

All persons driving carts, wagons, drays and other carriages, shall, unless they have hold of the reins or lines, be sufficiently near to their horses, mules, or teams to control the same and prevent accident, under a penalty of two dollars for each and every offence. (*a*)

(*a*) In the case below cited, the following was said by the Court:

Comegys, C. J.: In this case ''the driver had left his horse unhitched, and unrestrained by the weight and attachment to be fastened to the bridle which he carried in his wagon, * * It cannot then be said that the driver was sufficiently near the horse to control him. (564) * * It appears by an ordinance of the city * * that all drivers of vehicles * * shall, unless they have hold of the reins or lines, be sufficiently near to their horses, &c., to control them and prevent accident, under a penalty provided by it. This was to make the driver liable; but being a public ordinance, and, in contemplation of law, known to the citizens,'' &c., (563-4) it also makes the master liable for the servant's negligence. * * ''I say to you that disobedience of a city ordinance is unquestionably, to say the least of it, inexcusable, if not wilful negligence; and also, that without such ordinance, allowing a horse to be unattended in the street of a city by any one able at the time to prevent his movements, if he attempted to make any, is also such negligence,—''

Jones vs. Belt, 8 Houst. 562 at 564. (yr. 1884)

Lore, C. J.: ''We have been asked to say to you that the leaving of horses unhitched and unattended in the streets of the city was in itself negligence. We do say to you that the leaving of a horse unhitched * * on the streets of the city unattended by, and out of the control and reach of the driver, is negligence. This principle has been decided in the case of Robinson vs. Simpson'' (8 Houst. 398) ''by the late Chief Justice Comegys.''

Higgins vs. Wil. City Ry. Co., 1 Marv. 352 at 359. (yr. 1895)

Ordinance, April 14, 1876.

[No driver of any vehicle upon any of the tramways used or belonging to any passenger railway company in this city, or at any crossing of the streets thereto, shall drive so close to

any vehicle in front that there shall be less than twenty feet between the rear of said vehicle in front, and the head of the horse, mule or team of the vehicle in the rear, under a like penalty of two dollars for each and every offence. This provision shall not apply to funeral or other processions.] Space between vehicles.

Every horse [or horse kind, cow, ass, mule, goat, sheep, [goose, swine,] kine or neat beast] going at large in this city shall be deemed a common nuisance, and it shall be the duty of the [Dog Catcher] to take up and impound in some safe and suitable place, every horse [or horse kind, cow, ass, mule, goat, sheep, [goose, swine,] kine or neat beast] found so going at large; also every person residing within this city may take up and deliver any horse [or horse kind, cow, ass, mule, goat, sheep, [goose, swine,] kine or neat beast] found so going at large, to the [Dog Catcher,] who shall impound the same as aforesaid; the [Dog Catcher] so impounding any horse [or horse kind, cow, ass, mule, goat, sheep, [goose, swine,] kine or neat beast] shall give notice thereof to the person owning or having care of such horse [or horse kind, cow, ass, mule, goat, sheep, [goose, swine,] kine or neat beast] or deliver written notice thereof at the usual place of abode of such person, if such person be known and can be found within this city, or have a known place of abode within the same, otherwise proclamation of such impounding shall be made by the bellman or other person appointed by the said [Dog Catcher.] Such notice or proclamation shall be given, delivered, or made, if the impounding be before sunset, within one hour after the impounding, but if after sunset, within one hour after sunset, then before nine o'clock of the next morning, unless the same be Sabbath, and then of Monday morning. The fee for impounding a horse [or horse kind, cow, ass, mule, goat, sheep, [goose, swine,] kine or neat beast] shall be [one dollar], and there shall be an additional charge of fifty cents if the same be kept more than four hours. [Every such animal so impounded shall be delivered to the owner or person entitled to the same, upon application and payment of the lawful fee and expenses of impounding and keeping the same. If such application be not made within forty-eight hours after the im-

Feb. 8, 1872. Horses, etc., at large a nuisance.

Amendments. Ordinance April 26, 1888. Impounding of animals.

Notice to owner.

Written notice.

Notice by bellman.

Fees for impounding.

June 25, 1867.

Delivery of animals on payment of fee and expenses.

Appraisement.

pounding, the person taking it up shall have it appraised by two persons appointed by the Mayor, a copy of which appraisement, containing a description of the stray shall be set up in front of the City Hall, and if the appraised value exceed twenty-five dollars, shall be published three times in a newspaper published within the city, whereupon if the person entitled to the same shall not have appeared and paid the lawful charge and expenses for the sale thereof, and it shall be sold by the [Dog Catcher] at public vendue, on such notice as is required for selling goods on execution, and the proceeds applied to pay costs, charges and expenses, and damages if any, and the balance be paid to the City Treasurer for the use of the city.]

Publication of appraisement.

Sale of animal.

Proceeds, how applied.

Dog catcher to recover fine.

Jan. 31, 1867.

It shall be the duty of the [Dog Catcher] impounding to institute proceedings for the recovery of the fine [and costs] incurred in the case, unless the person liable thereto shall voluntarily go with him to the Treasurer of the city, and pay to him said fine [and costs]; payment to said Treasurer with the assent of such [Dog Catcher] shall be a discharge from the fine [and costs].

Voluntary payment of fine and costs.

Exceptions.

A horse [or horse kind, cow, ass, mule, goat, sheep, [goose, swine,] kine or neat beast] going at large by accident, with a person in pursuit, to take up the same shall not be within this ordinance.

Racing.

If any person shall drive or ride a horse [horse kind, ass, mule, goat, sheep, kine or neat beast], horses, beast or beasts of burden, in running or racing (a) with another horse [horse kind, ass, mule, goat, sheep, kine or neat beast], horses, beast or beasts of burden, in any street, lane or alley, open lot, square, or public place of this city, every person so offending shall forfeit and pay a fine of twenty dollars.

Fine.

(a) *Comegys, C. J.*: "Driving fast, or *racing* upon a street of the city, is an act of negligence by reason of an ordinance which has been read in proof before you, as indeed, it would be without any such ordinance. The streets of a city are not to be used by drivers to endanger the safety of persons or property," &c.

Robinson vs. Simpson, 8 Houst. 398 at 406-7. (yr. 1889)

(The above was a case of sleigh-racing.)

Lore, C. J.: "If Courtney was *racing* with the driver of the Friendship engine, or was driving at an immoderate gait at

the time of the accident, he was thereby violating ordinances of the city, and was guilty of negligence per se; and if his death resulted from such racing or immoderate gait, the plaintiff cannot recover.''

Carswell Admr. vs. Wilmington, 2 Marv. 360 at 365. (yr. 1897)

(The above was the case of two fire-engines racing.)

Lore, C. J.: ''If the jury believe from all the evidence in the case that the defendant was driving his horse in a run and *racing* with a bicycle at a dangerous and unnecessary speed upon one of the streets of the City of Wilmington, that would constitute negligence,'' and if injury result by reason of such negligence, the defendant is liable.

Ford vs. Whiteman, 2 Penn. 355 at 357. (yr. 1899)

Showing stallion.

If any person shall lead or manage, for the purpose of showing, a stallion in any street, lane, or alley, open lot, square or public place of this city, every person so offending shall forfeit and pay a fine of five dollars.

Fencing around sand holes, quarries, brick yards, etc.

Fine.

SEC. 4. The owners and possessors of tan yards, brick yards, or lots used for quarrying stone (*a*) or digging sand, gravel or earth, within this city, shall keep the same inclosed with sufficient fence, of which any two members of the City Council shall be the viewers and judges; and if any person owning or possessing such tan yard, brick yard or lot, being required by two members of the City Council to inclose the same or to repair the fences thereof, by a written requirement under their hands, shall not observe and fulfill such requirement within the time therein limited, every person so offending shall forfeit or pay a fine of five dollars, and a fine of five dollars for every five days during which the yard shall remain without sufficient inclosure after the expiration of the time limited in such requirement.

(*a*) In a suit for damages for not enclosing or guarding a lot used for quarrying stone, the declaration alleged the excavation was made by the city. The proof was, it was done by a private individual, and a nonsuit was granted. In such cases there should be a count for misfeasance and also for non-feasance.

Flanagan's Admr. vs. Wilmington, 4 Houst. 548-556. (yr. 1873)

Tippling or disorderly houses.

Penalty.

Jan. 19, 1865.

SEC. 5. If any person shall keep a tippling house or a disorderly house within the limits of this city, every person so offending shall be guilty of a common nuisance, and for every such offence shall forfeit and pay a fine of twenty dollars [or be committed to the custody of the High Constable for any

term not exceeding sixty days, or both, or the defendant shall be committed to the custody of the High Constable until the judgment against him be satisfied, not exceeding sixty days.]

Tippling house defined.

It is declared that every house and place in which there shall be sold intoxicating liquor contrary to law, by any measure less than a quart, to be drunk on or near the premises, where the same is sold, is a tippling house, and that every tavern, inn, victualing house, or house or place of public entertainment in which persons shall be suffered to remain tippling or making a noise after ten o'clock in the evening, or in which persons shall be allowed to drink to drunkenness, or to behave in a disorderly manner or in which, or in any outhouse or place in any manner connected with which, or in the possession or under the control of the keeper of which gaming at nine pins or bowls, or with cards, dice, or otherwise for money, liquor or any value, shall be suffered, is a disorderly house (*a*) within the preceding provision.

Disorderly houses defined.

(*a*) *Booth, C. J.*: "If a man keeping a store and selling liquor, whether lawfully or unlawfully, permit persons to collect there in crowds, who under the influence of liquor there obtained, are noisy and riotous, and by their cursing and swearing, or other misbehavior, disturb the neighborhood generally, and to the general annoyance of the people there residing or being, he is guilty of keeping a disorderly house, * * and the *footway or pavement* before a man's store may, by his permission and encouragement, be so used in connection with his house, as to become, for this purpose, a *part of his house,*" &c.
State vs. Buckley, 5 Har. 508. (yr. 1854)
See to the same effect State vs. Burchinal, 4 Har. 572. (yr. 1847)

Amendment, Ordinance of March 10, 1892.

[And it is further declared that every house, building or structure in which persons shall be allowed to behave in a disorderly manner, or to annoy or disturb those residing in the neighborhood of said house, building or structure, is a disorderly house (*a*) within the preceding provision of this section.]

Disorderly house further defined.

(*a*) An officer may enter a disorderly house to make an arrest.
The Court: "The entry of such houses by the officers to suppress disorder, and the arrest of disorderly persons therein, is commendable; and for the public good such officers ought to have every reasonable countenance and protection by the Court and jury."
State vs. Lafferty, 5 Har. 491. (yr. 1854)
(The above evidently means *without a warrant*. See pp. 213-214 of this volume.)

Fireworks and bonfires.

SEC. 6. If any person shall throw or fire any cracker, squib, or other fire work, within the limits of this city, or shall make a bonfire, or any fire in the open air, except in the course of some trade or business, [a fire may be built in any proper iron box or pan, the bottom of which shall be elevated at least six inches above the ground] in any street, lane or alley of this city, or in any lot or place in this city, within fifty yards of any street, lane, or alley, or so as to endanger any property, every person so offending shall forfeit and pay a fine of ten dollars.

Resolution, Street and Sewer Department, Feb. 8, 1898.

Penalty.

Discharging firearms. April 14, 1864.

And if any person shall discharge a swivel, gun, pistol, or any fire arms within the limits of this city, * * * every person so offending shall, for every such offence, forfeit and pay a fine of one dollar.

Penalty.

License required for circus and other shows.

SEC. 7. No person shall exhibit or be concerned in exhibiting, or cause to be exhibited at any place within the limits of this city, tumbling or other feats in riding, or managing a horse, or any circus, show, or sports, or rope dancing, puppet shows, or mountebanks, or juggling tricks or practices, for the purpose of gain, or for admission to be present at, or to see which any money or value shall directly or indirectly be demanded or received, every person so offending shall be guilty of a common nuisance, and for every such offence shall forfeit and pay a fine of not less than fifty dollars; *provided, however*, that this provision shall not apply to such person or persons as shall have first obtained a license therefor. * * *

Penalty. 12 D. L. 159.

Minors unlawfully assembling.

SEC. 8. (*a*). It shall not be lawful for any minors to collect and assemble in the public streets, lanes or alleys, or in any yard or lot, or on any wharf, or in any of the market houses in this city, without the written permission of their parents, masters or guardians, at any time after the setting of the sun, or at any time during the first day of the week, or Sabbath day; and in case of any such assemblage or collection, the Mayor shall have power and it shall be his duty, upon knowledge of such assemblage or collection, to disperse the same; and in case any one or more of the persons so assembled or collected, shall refuse to disperse peaceably, when so com-

Mayor to disperse.

Refusal to disperse.

manded, the said Mayor shall have power, and it shall be his duty to call to his aid one or more of the Constables of the city to assist in dispersing the same; and whenever in his opinion it may become necessary for the public peace, or to disperse the said assemblage, to commit to the cell of the City Hall any one or more of said minors, whether they may have such written permission as aforesaid or not, for any period not exceeding twenty-four hours.

(*a*) This section should be repealed.

Storing of hay, straw and corn fodder.

Feb. 24, 1876.

SEC. 9. It shall not be lawful for any person within the city limits, where frame buildings are forbidden to be erected, to stack, or [store] any hay, straw, or corn-fodder, unless it be in some covered or secure barn, shed or hay-house, remote from and not adjoining any private dwelling or public building; and if any person so offending shall be notified by the Street Commissioner to remove the same, and do not within twenty-four hours after such notice remove the said hay, straw, or corn-fodder, the said Commissioner shall proceed to

Removal of hay, etc.

remove the same at the expense of the offending party, and he shall lodge a complaint before the [Municipal Court,] who shall fine the offender a sum not less than ten dollars, and not

Penalty.

exceeding fifty dollars.

Feb. 24, 1876.

[Whenever the Street Commissioner shall remove any hay, straw or corn-fodder as aforesaid, he shall place or store

Storing of hay removed.

the same in some building of the city or other building of the city or other proper building or place either within or outside of the limits of the city, to be by him provided for that purpose; and he shall give notice thereof in writing to the owner

Notice of removal.

of such hay, straw or corn-fodder, or other person so offending. If such owner, or person so offending, cannot be found, or be absent from the city, so that personal service of such notice cannot be made thereon, the notice as aforesaid may be

Advertisement.

made by one advertisement thereof in a daily newspaper published in the city. After two days from the removal and storage of any hay, straw or corn-fodder by the Street Commissioner as aforesaid, and notice given by him as required, he

Sale.

shall sell the same at public vendue, having first given one

day's advertisement thereof in one daily newspaper of the city, which advertisement may be made within said period of two days. The proceeds of such sale or sales shall be applied to the payment of all the necessary costs and expenses attending the proceedings under this section, and of any fine that may be imposed by the [Municipal Court] as aforesaid; any balance that may remain shall be refunded to the owner or other proper person, unless he cannot be found, in which case said balance shall be paid into the city treasury for the use of the city; *provided*, that such owner or other person so offending, at any time before sale as aforesaid, shall have the privilege of redeeming and taking away any such hay, straw or corn-fodder upon first paying to the city any fine that may be imposed upon him by the [Municipal Court,] and all costs and expenses incurred by the proceedings under this section.]

Proceeds of sale. How to be applied.

Redemption by owner.

Oct. 28, 1875.

Playing shinney or ball, or throwing stones, etc., on street prohibited.

SEC. 10. If any person or persons shall hereafter play, or be concerned in playing, at the game called shinney, [or shall be concerned or engaged in throwing, catching, or playing ball, or throwing stones, or other hurtful or dangerous missiles out of a sling, or otherwise,] in or on any of the streets, lanes or alleys of this city, he or they so offending shall forfeit for every such offence a fine of one dollar.

Penalty.

Bathing.

June 15, 1876.

SEC. 11. No person shall bathe [within the limits of the city in the Brandywine creek, or either of the races therefrom, or in the Christiana creek,] between the hours of half-past five in the morning, and nine in the evening; *provided*, that nothing herein contained shall prevent any person who is properly clothed from bathing within the limits and hours aforesaid.[1]

Proviso.

Penalty.

Any person violating the above mentioned provisions shall forfeit and pay a fine of not less than two and not more than five dollars, and in case the said fine shall not be paid by the person so offending, upon conviction of the offence, he

1. All bathing in waters within the limits of the parks is prohibited by the Board of Park Commissioners.

shall be imprisoned for not less than six nor more than twenty-four hours.

Jan. 4, 1872. Speed of locomotive.

Dec. 9, 1881.

SEC. 12. It shall be unlawful for any locomotive, railroad car or other vehicle to be propelled or drawn upon such part of any railroad as shall be within the limits of the City of Wilmington [at a faster rate than six miles per hour.] (*a*)

(*a*) This provision relates only to *railroad* cars.

"The city ordinance limiting the rate of speed of locomotives, railroad cars and other vehicles within the limits of the City of Wilmington, relates to railroad cars, but not to cars of city railways." (201) (syllabus).

Lore, C. J.: "The ordinance seems to relate to railroad cars, but not to cars of city railways."

Licznerski vs. W. C. Ry., 5 Penn. 201 at 208. (yr. 1904)

The above case sets out Section 12 verbatim (p. 202), and analyzes it thoroughly. The Court said there was no ordinance affecting the speed of electric cars in Wilmington (p. 208).

See Maxwell vs. Wil. City Ry. Co., 1 Marv. 199 at 200. (yr. 1893)

A violation of the ordinance is negligence per se, but unless this negligence causes the accident, the mere violation of the speed limit does not render the company liable.

Pennewill, J.: "In such case, however, the defendant would not be liable unless the violation of the ordinance, that is, the excessive speed, of the train, caused the accident complained of," &c.

MacFeat's Admr. vs. P., W. & B. R. R., 5 Penn. 53 at 66. (yr. 1904)

Knopf vs. P., W. & B. R. R. Co., 2 Penn. 392 at 396 and 399. (yr. 1900)

Where neither statute nor ordinance limits the speed of railroad trains, the law is as follows:

Lore, C. J.: "Where the law does not limit the speed of railroad trains, such speed is in the discretion of the company, reasonable precaution being taken therein for the security of life and property."

Reed vs. Queen Anne's R. R., 4 Penn. 413 at 419. (yr. 1903)

MacFeat's Admr. vs. P., W. & B. R. R. Co., 5 Penn. 53 at 66. (yr. 1904)

Burton vs. Railroad Co., 4 Har. 252 at 253. (yr. 1844)

Who responsible for violations.

The engineer, conductor, controller, owner or owners, or other person or persons, having for a time the command of any locomotive, railroad car or other vehicle, who shall propel or cause to be propelled or moved, such locomotive, railroad car or other vehicle upon such part of any railroad as shall be within the limits aforesaid at a faster rate than six miles per hour, for every (*a*) such offence shall forfeit and pay a fine of one hundred dollars.

Penalty.

(*a*) As to the duties, in general of an engineer in operating and running cars through the City of Wilmington, see the case of

Burton vs. Railroad Co., 4 Har. 252 at 253. (yr. 1844)

There shall be kept and maintained in attendance upon such parts of any railroad as shall be within the following limits, by the railroad company or companies owning or using the same, viz: From West street on the west side of Market street to King street on the east side of Market street in this city, one or more look-outs or persons whose duty it shall be to precede, at a distance not greater than sixty feet, all locomotives and trains of cars belonging to, or in the use of said company or companies, while in motion within said limits, and remove all obstructions to, and warn all persons upon the track of the said railroad company or companies within said limits, of the approach of said locomotives and trains; and the said railroad company or companies shall also keep a look-out other than the one who precedes the locomotives and trains of cars as aforesaid, at every point where the railroad track owned or used by said company or companies is crossed by the following named public streets of this city, viz: Justison, West, Market, King, French, Third, Fourth and Seventh streets, who shall, upon the passage of every locomotive, between the hours of six A. M. and nine P. M., warn the passers on the public streets of such passage by waving a flag (*a*) in the day time and a lantern at night; and for failure herein the said company or companies shall each forfeit and pay a fine of thirty dollars; and furthermore, the engineer, conductor or person having charge of any such locomotive shall within the city limits ring or cause to be rung, continually, the bell (*b*) attached to such locomotive, for the purpose of warning all persons of the approach of the said locomotive or any train belonging thereto, and upon failure thereof shall forfeit and pay a fine of ten dollars.

Look-outs to precede trains.

Limits.

Other look-outs at certain crossings.

Penalty of railroad companies.

Ringing of locomotive bell.

Fine.

(*a*) This provision expressly requires the employment of a look-out or flagman. When the law does not so require, and yet the company employs, and has stationed, a flagman at a certain place, his absence from that place will be an assurance that the road is clear and safe.

Lore, C. J.: "As to flagmen, where a railroad is under no original obligation, to station a flagman at a particular crossing; yet, if it has done so for many years, travellers have a right to presume in case of his absence, that the road is clear and the way safe."

Martin vs. B. & P. R. R. Co., 2 Marv. 123 at 131. (yr. 1895)

Boyce, J.: "But the absence or negligence of the flagman will not excuse the person about to cross the track from using

every reasonable precaution that an ordinarily prudent and careful person would use.''

Wil. City Ry. vs. White, 6 Penn. 363 at 372. (yr. 1907)

(*b*) This *express* requirement that the *bell shall be rung,* &c., does not absolve the engineer from also *blowing the whistle,* and running at a prudent speed, and exercising proper care, &c.

Pennewill, J.: ''It was the duty of the defendant, said the Chief Justice, to make use of all the usual and appropriate means, as bell and whistle, to warn wayfarers who might be passing along the highway, intending to cross the railroad, of the approach of the train; and it was in no way absolved from that duty by an act of Assembly providing for the ringing of the bell. The intent of the act was to punish engineers and others, for not doing their duty, and not to relieve the company from the common law duty of taking the usual means to warn people of danger.''

Knopf vs. P., W. & B. R. R. Co., 2 Penn. 392 at 397-8. (yr. 1900)

Trains stationary across street.

It shall not be unlawful for any railroad company to suffer or permit any locomotive, or any train, or car, or other vehicle belonging to or in the employ or use of the said company, to remain stationary upon the track owned or used by them, where the same is crossed by any of the public streets of this city, (*a*) and if they shall suffer or permit the said locomotive, train, car or other vehicle so to remain stationary for a longer period of time than ten (*b*) minutes unless in case of accident, they shall forfeit and pay a fine of thirty dollars.]

Fine.

The railroad company has no right to obstruct the street.

(*a*) *Houston, J.*: '' * * there can be no question in this case that the people of the city and the public in general, had a paramount right to the use and enjoyment of it'' (the street) ''as such, as well where it is intersected and crossed by the railroad as in any other part of it.''

McCoy vs. P., W. & B. R. R. Co., 5 Houst. 599 at 609. (yr. 1879)

And the railroad company should repair and reconstruct the crossing, whenever necessary, with as little delay as possible. id 609.

Aside from the above section, if a car should be left on the track at night, so near a street crossing that it would frighten an ordinarily gentle horse, the company would be liable in case of injury.

Houston, J.: '' * * if it'' (the car) ''was so near to the road as to frighten an ordinary, quiet and gentle horse, then it was guilty of negligence in leaving it there for the night, although it was not on any part of the road, if it was so near; but it had a right to leave it there, if it would not frighten a horse of that kind, for the time being,—for the night,'' &c.

Kyne vs. W. & N. R. R. Co., 8 Houst. 185 at 198. (yr. 1888)

(*b*) A violation of this provision is negligence. The Court said:

Houston, J.: '' * it was also expressly prohibited by an ordinance of the City of Wilmington * * which makes it unlawful for any railroad company, to leave any engine, train, or car stationary on any railroad track, owned or used by it, where it is crossed by any street of the city for a longer time than ten minutes, except in case of an accident'' * * and ''the city ordinance made the act of leav-

ing the car standing there for a longer time than ten minutes * * unlawful, as well as culpably negligent at common law.''

McCoy vs. P., W. & B. R. R. Co., 5 Houst. 599 at 604-5. (yr. 1879)

We have seen that the first paragraph of Sec. 12 applies to railroad cars only. The same is true as to the above last paragraph of said section—neither applies to electric, or street railway cars.

Robinson, C. J.: ''They had a right to keep car No. 16 a *reasonable* time on this turnout, so that car No. 10 might pass it, or for any other purpose necessary and proper for using their cars, and we do not think the ordinance cited by the learned counsel deprives them of that right.''

Ford vs. Warner Co., 1 Marv. 88 at 92. (yr. 1893)

Hand-carts or wheelbarrows on side walks.

SEC. 13. Any person inhabiting a dwelling house within the limits of this city, being the head of a family in such house, or principal person occupying the same or a part thereof, may in case of annoyance arising from the passing on the paved footway or sidewalk in front or by the side of such house with a wheelbarrow, hand-cart or hand-carriage, prefer to the Mayor of this city a complaint in writing, verified by oath or affirmation of such annoyance. Upon such complaint, the Mayor shall cause notice in writing thereof to be served by a Constable of the city upon every person complained against; and if after such notice any person so complained against, or his or her apprentice or servant, or any person in his or her employment, shall pass on the paved footway or sidewalk in front or by the side of such house with a wheelbarrow, hand-cart or hand wheel-carriage, the said person so complained against shall for every such act or passing on such paved footway or sidewalk after such notice forfeit and pay the sum of one dollar; *provided*, that the passing directly to or from any shop, store or yard into or out of the street, or the passing upon a footway or sidewalk [before seven o'clock in the morning or] when the street is impassible shall not be within this ordinance.

Notice.

Penalty.

Aug. 7, 1879.

Appearing in fantastic or indecent costume or with masked face.

Indecent conduct.

Fine.

Nov. 22, 1888.

SEC. 14. If any person or persons shall singly or in company, on the fourth day of July or on any other day in any year, parade, march or publicly appear in this city in an indecent or fantastic costume, garb or dress, or appear with painted, masked or disguised face, or behave in an indecent manner in public, every person so offending shall for every such offence forfeit and pay a fine of five dollars; [*provided*,

however, that any social company or body of persons who desire to hold a masquerade party or ball in this city at any public hall or at any private residence shall be permitted to march in a body in masquerade dress through the streets of this city to and from the place where such masquerade party takes place, on two or more of the persons who desire to take part in said masquerade applying to the [Board of Police Commissioners] of the city and receiving from him a written permit for that purpose, and the [Board of Police Commissioners] are hereby empowered and directed in case such permit be granted by him to send one or more of the City Constables with the masqueraders on the public streets to their place of meeting.] [*Provided, further, however,* that the Board of Police Commissioners shall have authority to issue a permit to any person or persons, or a permit to the general public, to march or publicly appear upon the streets of this city, in an orderly manner, in a fantastic costume, garb or dress, or appear with painted, masked or disguised face, whenever the said Board of Police Commissioners deem it advisable.]

Masquerades to have police protection by getting a permit from Board of Police Commissioners.

Ordinance, Dec. 11, 1908.

Ordinance, Dec. 11, 1908.

Ordinance, Dec. 11, 1908.

Recovery and use of fines.

SEC. 15. The fines, forfeitures and penalties accruing under this ordinance shall be recovered before the [Municipal Court] for the use of the corporation.

All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

Passed at City Hall, October 30, 1856.

A FURTHER SUPPLEMENT to the ordinance concerning offences against the public economy and certain nuisances.

Placing ashes or other rubbish in the streets.

SECTION 1. If any person shall place or cause to be placed on any public street in this city between the curb lines any ashes, dirt, rubbish, offal or other thing, except as prescribed and allowed by the ordinances of the city, he shall be guilty of a common nuisance and shall forfeit and pay a fine not exceeding five dollars and an additional fine not exceeding five dollars for every twenty-four hours that such nuisance is continued and the costs of prosecution, and shall be

Penalty.

imprisoned until the fine and costs be paid or until he be discharged, * * * * *provided,* that persons in removing any article or substance from their premises may place the same on the street, between the curb lines, temporarily if such article or substance be not offensive, and shall remove it therefrom before night of the same day on which it was placed on the street; *provided, further,* that this ordinance does not alter or affect the ordinance entitled "An ordinance concerning nuisances injurious to the health of the city."

Exception.

Proviso.

* * * * * * * * * *

Repealed, April 18, 1893, by resolution of Street and Sewer Department.

Passed May 19, 1859.

AN ORDINANCE defining certain nuisances.[1]

Keeping house of ill-fame.

SECTION 1. If any person shall keep or have any interest in keeping a house of ill-fame or assignation within the limits of the city he, she or they shall be deemed guilty of a common nuisance, and shall be fined thirty dollars for every such offence and a further sum of twenty dollars for every twenty-four hours that the said nuisance is allowed to remain on the premises after being convicted of such offence, [or be committed to the custody of the High Constable for any term not exceeding sixty days or both, or the defendant shall be committed to the custody of the High Constable until the judgment against him be satisfied, not exceeding sixty days.] (*a*)

Fine.

Jan. 19, 1865.

Imprisonment.

(*a*) Police officers have the right to enter such places to prevent disorder and to make arrests, and this, it is thought without a warrant.
State vs. Lafferty, 5 Har. 491. (yr. 1854) See pp 213-214 of this volume.

Recovery of fines.

SEC. 2. All fines or penalties accruing under this ordinance shall be recoverable before the [Municipal Court] for the use of the corporation. (*a*)

(*a*) The Law and Order Society, now, by virtue of an Act passed May 26, 1897, receives one-half of all the fines, &c., collected, where raids are made, and conviction secured, on evidence furnished by it.
Law and Order Society vs. Mayor and Council of Wil., 4 Penn. 366 at 367. (yr. 1903)
(See Sec. 148, "a" of the Charter.)

Passed at City Hall, May 19, 1859.

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1. See also Act of May 9, 1895, 20 D. L. p. 272, at p. 536 this volume.

A FURTHER SUPPLEMENT to the ordinance concerning offences against the public economy and certain nuisances.

Signs over sidewalks.

Sign posts.

Awnings.

Resolution of Street and Sewer Department, May 23, 1893.

Bulk or projecting doors, etc.

Bulk or projecting window.

Notice for the removal of bulk doors or windows.

Penalties.

SECTION 1. If any person shall erect, or hang, or fasten, or cause to be erected, hung or fastened any sign, show bill, lantern or show board of any description whatever, which shall project or extend more than four feeet from the building line, over any sidewalk or street in this city, or shall place a sign post on any such street or sidewalk, or shall construct a permanent awning over any street or sidewalk aforesaid, or shall so place any awning (*a*) over the sidewalk that it will terminate between the curb line and the building line [other than a swinging frame and awning], or shall place over any sidewalk or any part thereof, as a shelter, a covering composed of material other than canvas, or shall hang or suspend over or across any sidewalk any flap, wing or side awning [of any description, or shall hang or fasten any sign, show bill, lantern, show board, awning or awning frame] less than seven feet above such sidewalk, or shall hereafter construct, place or build over, into or upon any pavement, street or sidewalk in this city, any bulk or projecting door, door jamb, door frame, door sill, beyond the true building line on said street, or shall hereafter construct, place or build over any pavement, street or sidewalk in this city, any bulk or propecting window, (*b*) window jamb, window frame or window sill, more than eighteen inches from or beyond the true building line on said street, or so that the bottom of any such window jamb, frame or sill shall be at least eighteen inches above the pavement or sidewalk at its proper grade, or shall keep, have or retain, after three weeks notice in writing from the Mayor (*c*) of the city, to abate or remove the same, any such bulk or projecting door, window, door, jamb, door frame, door sill, window frame, window jamb or window sill, already erected, placed or built and projecting as aforesaid he shall be guilty of a common nuisance and shall be liable to a fine of five dollars, and an additional fine of five dollars for every twenty-four hours that such nuisance is continued. *Provided,* that this ordinance does not relieve from liability persons who, before its

passage, have violated other ordinances of the city by committing the offences herein prohibited. Former offenders not exempted hereby.

(*a*) As to the city's liability for allowing defective awnings in the streets of the city, see the case of

Jarrell vs. Wilmington, 4 Penn. 454. (yr. 1903) See p. 822 of this volume.

(*b*) In the case below cited, bay windows were built out on the street 3 feet on one side, and 18 inches on the other to the first story, and then 3 feet from the second story up. The Chancellor, not thinking that 3 feet amounted to such a substantial encroachment as to "substantially interrupt or impede the public use of the same as a street or highway" (500) refused to grant an injunction.

The Chancellor: "In a clear case of substantial and material encroachment upon a public street or highway, of such a character as to seriously interfere with its use, I would consider it my duty to act without the aid of a jury; but where the encroachment, although illegal, is not of that character, the proper tribunal is a court of law, which has full power, not only to punish the offender, but to abate the nuisance."

Gray vs. Baynard, 5 Del. Ch. 499 at 505. (yr. 1883)

(*c*) The streets of the city, from building line to building line, are now, (since 1887), under the control and jurisdiction of the Street and Sewer Department.

See Secs. 1 and 4 of the Street and Sewer Department Act, pp. 224 and 228 of this volume.

[SEC. 2. That Section 1 shall not be construed to interfere with the display of such flags, banners or bunting, on patriotic, public or political occasions, for such period or periods as the Board of Directors of the Street and Sewer Department shall in their discretion authorize.] Resolution of Street and Sewer Department, Aug. 20, 1907.

Passed at City Hall, June 16, 1859.

AN ADDITIONAL ORDINANCE to define and prohibit certain nuisances.

SECTION 1. Whoever shall stand idling or loitering (*a*) upon any pavement, sidewalk or crosswalk, or stand in a group, or congregated with others, on any pavement, sidewalk, crosswalk or doorstep, in any street or public way in this city so as to obstruct or hinder the free and convenient passage of persons walking, riding or driving over or along such pavement, walk, street or way, and shall fail to make way, remove or pass, after reasonable request from any per- Standing or congregating on sidewalk.

son, shall be deemed guilty of a common nuisance and liable to a fine not less than fifty cents nor more than ten dollars.

Fine.

(*a*) This section aims at loafing and corner lounging. Persons have a right to stop and talk for a reasonable time.

Robinson, C. J.: "It is true that highways are made for the convenience of the traveling public, and that many obstructions to public travel are nuisances, but it is also perfectly well settled that travellers are not bound to keep in motion every instant they are on the road. They have a right to stop temporarily for business or pleasure, provided they do not unreasonably interfere with the rights of others who wish to use the road."

Ford vs. Warner Co., 1 Marv. 88 at 92. (yr. 1893)

Ordinance, Dec. 17, 1896.
Indecent conduct.
Ordinance, Dec. 17, 1896.
Offensive or profane words.
Ordinance, Dec. 17, 1896.
Ordinance, Dec. 17, 1896.
Ordinance, Dec. 17, 1896.
Indecent words or figures.
Ordinance, April 16, 1891.
Ordinance, April 16, 1896.
Printing or circulating prohibited.
Spitting, etc., on steps.

SEC. 2. Whoever shall, in any street * * * public place, [or place of public amusement] in this city, be guilty of any indecent or disorderly conduct (*a*) or make any offensive outcries or loud noises, or utter, [act] or sing any lewd, scurrilous, profane, obscene words, [acts] or songs [or shall permit any person to utter, act or sing any lewd, scurrilous, profane, obscene words, acts or songs, in any place of public amusement in this city, of which he is the owner, manager, proprietor or lessee] or shall write or make any indecent or obscene words or figures upon any fence, building or other public place [or shall place, post or cause to be placed or posted any indecent or obscene figure, picture, poster or representation upon any fence, building or other public place], [or shall print, or cause to have printed, or keep, or cause to be kept, or serve or circulate, or cause to have served or circulated, for the purpose of sale, show or gratuitous offering, any newspaper or paper-writing, containing, either in express or plain words, or by intimation, suggestion or innuendo, any indecent, lewd, scurrilous, profane or obscene words, songs, figures or pictures, of or about, any person, place or thing] within the city, or shall drop, place, deposit, spirt or spit upon any door step in this city, any dung, tobacco, spittle or other noisome or filthy substance, shall be deemed guilty of a com-

mon nuisance, and liable to a fine of not less than [one] and not exceeding [fifty] dollars. Ordinance, Dec. 17, 1896. Ordinance, Dec. 6, 1895.

(*a*) Disorderly conduct is a phrase of broad meaning.
See the cases of
State vs. Lafferty, 5 Har. 491. (yr. 1854) Noise and general disorder, and a disorderly house.
State vs. Burchinal, 4 Har. 572. (yr. 1847) Cursing, dancing and drunkenness.
State vs. Walter, 2 Marv. 444. (yr. 1895) Indecent exposure.

[It shall be the duty of the Chief of Police, upon the conviction of any one, for placing or posting or causing to be placed or posted, any indecent or obscene figure, picture, poster or representation upon any fence, building or other public place, to cause the same to be immediately removed.] Removal of posters. Ordinance, April 16, 1891.

SEC. 3. Whoever shall use or place upon any brick pavement, footway or sidewalk of any public street of this city, any wheelbarrow, hand-cart or hand-barrow (*a*) (except it be placed close alongside of a building and parallel with the street where the brick pavement, sidewalk or footway is ten feet or over in width and not otherwise), or vehicle of any kind used for the transportation of merchandise or provisions of any kind, whether the said vehicle be used for hire or pay, or otherwise, [except before seven o'clock in the morning or] unless when prevented by the depth of snow or mud in the streets or other unavoidable causes, rendering the passage thereon impracticable, or in passing across the said brick pavement, footway or sidewalk to or from any dwelling house, store or other premises, of any such wheelbarrow, hand-cart or hand-barrow (provided, nothing herein contained shall be construed to permit any wheelbarrow, hand-cart or hand-barrow to be used upon any brick pavement, footway or sidewalk of any street in this city, during the market hours in that part of the street in which the market is being held,) shall be deemed guilty of a common nuisance, and liable to a fine of not less than fifty cents nor more than ten dollars. Wheelbarrow, etc., on footway. Aug. 7, 1879. Exception. Snow or mud Crossing sidewalks. Exclusion during market hours.

(*a*) See Sec. 13, p. 757 of this volume.

Passed at City Hall, December 21, 1865.

1. Part of ordinance of December 17, 1896, is as follows:
"* * striking out in the thirteenth line thereof, the word "ten," and inserting in lieu thereof, the words "twenty-five" " An ordinance of June 6, 1895, had previously stricken out the word "ten" in the thirteenth line and inserted in lieu thereof the word "fifty."

[1]*AN ORDINANCE to prevent spitting in certain public places in the City of Wilmington.*

BE IT ORDAINED, by The Council of Wilmington.

Spitting on sidewalks, &c., prohibited.

SECTION 1. It shall be unlawful on and after the passage of this ordinance for any person to spit on the sidewalk, crossing or footway of any public street, way, park or square, or upon the floor of any hall or office in any hotel, apartment house, tenement or lodging house which is used in common by the guests or tenements thereof, or upon the floor, platform, steps or stairs of any public building, hall, church, theatre, railway station, store or factory, street car or other public conveyance.

Definition.

SEC. 2. The term "spitting" as referred to in this ordinance shall be defined as follows:

The act of expelling anything from the chest, throat, mouth or nose.

Penalty.

SEC. 3. Any violation of this ordinance shall be punishable with a fine of not less than one dollar nor more than five dollars for the first offence, and not less than two dollars nor more than five dollars for each succeeding offence.

Approved October 26, 1907.

AN ORDINANCE concerning swine.

Swine at large, unlawful.

SECTION 1. Every owner, possessor or harborer of any hog, pig or other animal of the hog kind, who shall permit or suffer (*a*) the same to go at large, in any of the public streets, lanes or alleys within the limits of the City of Wilmington, shall be deemed guilty of a common nuisance, and upon conviction thereof, shall forfeit and pay a fine of not less than five nor more than ten dollars for every such animal found at large within said limits, besides costs of prosecution, one-half

Fine.

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1. See Resolution of Street and Sewer Directors, passed Nov. 12, 1907, p. 1000 this volume.

of the fine to be paid to the informer, and the residue into the city treasury.

(*a*) See Sec. 3, paragraph 3, p. 745 of this volume.

Impounding of hogs.

SEC. 2. Every hog, pig or other animal of the hog kind, found at large in any of the public streets, lanes or alleys within the limits of the City of Wilmington, shall be deemed a common nuisance, and shall be taken up and put into some proper place, to be provided by the city, by the policemen, or other proper person or persons duly appointed by the Mayor (*a*) for such duty; and after being kept for the period of twenty-four hours, and proclamation of the sale made by the bellman within said period, shall be sold at public vendue by the High Constable, or such other person or persons as the Mayor shall appoint for this purpose, and the proceeds of sale, after defraying all the necessary expenses attending the proceedings under this section, shall be paid into the city treasury for the use of the city. *Provided*, that the owner, at any time before sale, shall have the privilege of redeeming every such swine on forfeiting and paying therefor to the city, the sum of one dollar and all the costs. The Mayor is hereby authorized and required, from time to time, to appoint and employ a suitable person or persons to take up and dispose of, agreeably to the provision of this ordinance, all swine found within the limits of said city in violation of any of the provisions of this ordinance, and such person or persons, at his discretion, to discharge, and to appoint and employ others in their stead, and generally to adopt such other measures as may be necessary to carry into effect the provisions of this ordinance.

Notice, sale and disposal of proceeds.

Redeeming impounded hogs.

Appointment of person to impound hogs.

(*a*) The dog catcher has charge of such matters, now. See Sec. 3, paragraph 6, p. 747 of this volume.

Impounding fee.

For every swine impounded by virtue of this ordinance there shall be allowed to the person impounding the swine the sum of fifty cents.

Construction of hog pens.

SEC. 3. Every hog pen now existing or that may be hereafter constructed, within the limits of the City of Wilmington, shall have a wooden floor not less than twenty-four inches

above the surface of the ground, and every person who shall allow the floor of his or her hog pen to be otherwise than as herein provided shall be fined three dollars for every twenty-four hours that such violation of this section may be continued.

Distance of pens from dwelling house.

SEC. 4. If any person shall keep or harbor any hog, pig or other animal of the hog kind anywhere within the limits of the City of Wilmington, in any yard or pen within fifty feet of any dwelling house, such person shall be guilty of a common nuisance, (a) and shall be fined three dollars for every such offence.

(a) The above section grants the right conditionally, to construct a pig-pen. But the pig-pen must not become a public nuisance, for the city, without authority from the Legislature could not grant such a right.

Comegys, C. J.: "Unless an Act incorporating a town gives the authorities there, either expressly or by necessary inference, the power to authorize a nuisance, none exists * * for the reason that no power short of an Act of the Legislature for the purpose, can legalize the maintenance of a nuisance."

State vs. Luce, 9 Houst. 396 at 398. (yr. 1885)

As to when a pig-sty becomes a nuisance, see p. 399 of same case.

Police must report violations.

SEC. 5. It shall be the duty of the Police Constables of the City of Wilmington to make complaint to the Mayor (a) of said city of every violation of this ordinance, of which they have knowledge, and any such officer, on failure to make complaint as aforesaid, shall be fined five dollars, one-half the fine to be paid to the informer.

Penalty.

(a) The Board of Health has charge of all such matters and can remove any pig-pen in the city if it deems it "necessary or conducive to the health of the city."

See Sec. 6, p. 776 of this volume.

Passed at City Hall, October 19, 1871.

AN ORDINANCE relating to private alley-ways.

Placing of ashes, garbage or filth in alley-ways.

SECTION 1. That it shall be unlawful for any property owner, agent or tenant owning, having in charge or occupying any property within the City of Wilmington having a private alley-way leading thereto to place or suffer, or permit to be placed, any ashes, garbage, filth or noisome matter from

such property in or upon any part of the bed of said alley-way, or to allow any ashes, garbage, filth or noisome matter to be or remain in and upon the said alley-way opposite to the premises of such owner, agent or tenant. Any person so offending against the provisions of this ordinance shall be deemed guilty of a common nuisance, and shall upon conviction thereof before the Municipal Court forfeit and pay a fine of two dollars. Penalty.

Passed at City Hall, January 15, 1885.

AN ORDINANCE declaring the establishment of apparatus for the smoking of opium, or the furnishing of a place wherein persons may assemble for the use of opium within the limits of the City of Wilmington, to be a public nuisance, and regulating the use and sale of opium, morphine, and cocaine in said City of Wilmington and affixing penalties for the violation of its provisions. (a)

BE IT ORDAINED, by The Council of Wilmington.

(a) This ordinance was argued before the Superior Court in the year 1903 or 1904, and the Court decided the same to be constitutional. The Mayor and Council of Wilmington vs. Hertel (unreported).

SECTION 1. If any person or persons, firm or corporation shall set up or establish, or cause to be set up or established in any house, room, outhouse, tent, booth, arbor or other place whatsoever, within the limits of the City of Wilmington, any instrument, apparatus or device, whereby opium may be smoked, inhaled or used in any manner whatsoever, by other persons, or if any person or persons, firm or corporation shall procure, permit, suffer or allow persons to collect and assemble in his, her, their or its house, room, outhouse, booth, tent, arbor or other place whatsoever, under his, her, their or its control, and within the said city, for the purpose of smoking opium or of using opium in any manner, or if the owner, tenant, lessee or occupant of any house, room, outhouse, tent, booth, arbor or other place whatsoever, within said city, shall lease, hire, or rent the same, or any part thereof, to be used and occupied or employed, for the purpose of smoking opium, or of using opium in any way or manner, by other persons, the Establishment for opium smoking prohibited.

person or persons, firm or corporation so offending in any of the herein enumerated cases, shall be guilty of a public nuisance, and upon conviction thereof in the Municipal Court, shall forfeit and pay a fine of not less than twenty-five dollars ($25) nor more than one hundred dollars ($100). The owner of such house, room, outhouse, tent, booth, arbor or other place whatsoever, within said city, who shall have received information that any such smoking or use of opium as aforesaid, is in, or upon, the said premises, and shall not, within ten days thereafter, cause complaint to be made against the person who has set up or established the same, shall be deemed and held to have knowingly leased, hired, or rented the premises for the said smoking or use of opium.

Penalty.

Owner of houses, rooms, etc., after notification are liable.

Selling or giving opium and other drugs prohibited.

SEC. 2. If any person or persons, firm or corporation, after the passage of this ordinance, shall sell, dispose of, furnish or give away, directly or indirectly, within the City of Wilmington, to any person or persons, any of the drugs or chemical substances commonly known as opium, morphine, cocaine, or any of its salts, except to a duly licensed physician, or a duly licensed druggist, or to a person or persons named in a written prescription signed by a duly licensed physician, the person or persons, firm or corporation, so offending, in any of the herein enumerated cases, shall be guilty of a public nuisance, and upon conviction thereof in the Municipal Court, shall forfeit and pay a fine of not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

Penalty.

Limit on dispensing drugs.

SEC. 3. None of the drugs mentioned in Section Two of this ordinance shall be furnished more than once to any person or persons upon the same written prescription, and any person or persons, firm or corporation who shall violate the provisions of this section shall be guilty of a public nuisance, and upon conviction thereof in the Municipal Court shall forfeit and pay a fine of not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

Penalty.

Selling or giving drugs to minor.

SEC. 4. If any person or persons, firm or corporation, after the passage of this ordinance shall sell, dispose of, furnish or give away, directly or indirectly, within the limits of

the City of Wilmington, to any minor under the age of twenty-one years, any of the drugs or chemical substances mentioned in Section Two of this ordinance, whether upon prescription from a duly licensed physician, or without such prescription, the person or persons, firm or corporation so offending in any of the herein enumerated cases, shall be guilty of a public nuisance and upon conviction thereof in the Municipal Court, shall forfeit and pay a fine of not less than twenty-five dollars ($25) nor more than one hundred dollars ($100). Penalty.

Prosecutions will lie against members of a partnership, employee, &c.

SEC. 5. In any prosecution under this ordinance, the charge may be laid against all or any of the several members of a firm or partnership, or against any employee of any person, firm or partnership, and in case of a corporation, the prosecution may be against either the president or other chief officer thereof, or against the person in charge of, or managing the business, or any employee thereof.

SEC. 6. All ordinances or parts thereof, inconsistent with this ordinance are hereby expressly repealed.

Approved June 13, 1903.

CHAPTER VIII.

ORDINANCES RELATING TO THE HEALTH OF THE CITY.

		Page
1.	General Legislation	770
2.	Notice of Certain Diseases to be Placarded....	787
3.	Nuisances Injurious to Health	788
4.	General Gratuitous Vaccination	790
5.	Removal of Dead Bodies	792
6.	Appointment and Duties of City Registrar	793
7.	Collection and Removal of Garbage	796
8.	Sanitary Disposal of Garbage	801
9.	City Crematory	803
10.	Burial of Dead Bodies....	805
11.	Inspection of Meats.....	805
12.	Diseased Fruit	808
13.	Adulteration of Milk.....	809

AN ORDINANCE concerning the health of the city.

Board of Health, how composed.

Act of April 13, 1883, 17 D. L. 484.

SECTION 1. There shall be a Board of Health for this city to be composed of [the Port Physician, two other physicians, one practical plumber and one general business (a) man, to be annually[1] appointed by the Mayor of the city on the first Thursday in May; the said Mayor shall supply all vacancies; three members shall constitute a quorum. The Chief Engineer of the Surveying Department of the city shall be *ex-officio* a member of the Board of Health, without salary as such. The board shall appoint its own President and Treasurer from amongst its own members.] The High Constable, every City Constable and the Street Commissioner shall be officers of the board, bound to execute its orders. The members of said board shall each receive an annual salary of one hundred dollars. The board shall have the power and authority to appoint [four][2] executive officers, [two] for the eastern district and [two] for the western district, for the term of one year, who

Officers.

Salaries of board.

Executive officers.

Amendment, Ordinance, June 27, 1895.

1. The appointments are now made biennially. See Sec. 136 of the Charter.

2. See Sec. 136 of the Charter which provides for the appointment of two executive officers. See also Sec. 3 of the Charter.

shall be vested with police powers. [On and after the second day of May, A. D. 1907, the executive officers of the Board of Health of the City of Wilmington shall each receive an annual salary of nine hundred dollars ($900) payable in equal monthly instalments.] Salaries. Ordinance, Apr. 15, 1907.

(*a*) See the Charter provision relating to the above appointments, Sec. 136 of the Charter, and note "a" thereto.

[The Secretary of the Board of Health shall receive a salary of five hundred dollars per annum, payable monthly as other city officers are paid.] [The board shall have power with the consent of Council to appoint other officers as occasion may require and make reasonable allowance for the same.] Ordinance, Aug. 10, 1908. Salary of Secretary. March 14, 1882. Additional executive officers.

Sec. 2. The Board of Health shall have power to direct that any noisome matter, whether vegetable, animal or otherwise, or any reservoir, pool or pond of stagnant water, or any other nuisance or unwholesome thing of any kind whatsoever in this city or within one mile of the boundaries thereof which may, in the opinion of the said board, be the occasion of infectious or contagious disease or in any way detrimental to health, shall be abated, removed, remedied or emptied by the person to whom the same belongs or in whose possession or upon whose property it is, and that any place in this city or within one mile of the boundaries thereof in such filthy or noxious state that in the opinion of the board it is or may become a nuisance injurious to health, shall be cleansed. [And any person or persons who shall refuse or neglect to abate, remedy or remove any such nuisance or cleanse any such place after ten days' notice (*a*) from the Board of Health, shall forfeit and pay a fine of ten dollars.] *Provided, however,* that it shall appear to the said board that any of the said nuisances hereinbefore stated are caused or produced by any person or persons other than those on whose premises the said nuisances exist, or that the said nuisances are caused or produced by water, filthy, noisome or unwholesome matter flowing or running from the premises of any other person or persons or premises which may be in his, her or their occupation, that the said board (*b*) shall then give the direction to remove, cleanse, abate and remedy the same to the person or persons Powers of Board of Health. Nuisances. Ordinance, Aug. 10, 1882. Penalty for not abating nuisance. Proviso.

causing or producing such nuisance or to the person or persons from whose premises or from premises which may be in his, her or their occupation the same shall flow or run, and if the person to whom such direction is given shall not observe and fulfill the same within the time therein prescribed the said board shall order the said direction to be carried in effect by some officer of the board or other person or persons appointed for that service, and the expenses shall be paid by the person to whom the direction was originally given, but if the same shall not be paid by such person on demand, the same shall be paid by the Treasurer of the board, whose duty it shall be and who shall have the right to recover the same, with interest and costs, from the person who ought to have paid the same as aforesaid as debts of like amount are recoverable.

(*a*) This notice must come from the *Board of Health.* Notice from a person not a member of the said Board will be nugatory.

Lore, C. J.: "It is not set forth in the record * * that the party who made the complaint was a member of the Board of Health. * * The judgment, therefore, is reversed on that ground."

Johnson, d. b. a. vs. State, p. b. r., 2 Marv. 372 at 373. (yr. 1895)
(The above related to the non-removal of a hog-pen.)

(*b*) See note "a," above, to this section.

Offensive smells.

It shall not be lawful after the passage of this ordinance for any person or persons to erect or bring into use within the limits of this city any factory or building for the purpose of originating a business which shall produce any smell offensive (*a*) to the neighborhood or deleterious to the health thereof; and any person or persons who propose to originate such a business within one mile of the city limits shall first obtain the consent of the Mayor and Council of the city; (*b*) and every person who shall violate the provisions of this ordinance shall forfeit and pay a fine of one hundred dollars, and twenty dollars for every day such business may continue to be operated after the first conviction, to be recovered as other fines and forfeitures are recoverable.

Penalty.

(*a*) Any business that gives forth *offensive* smells to the annoyance of the neighborhood, is a common nuisance.

"Any trade or business carried on in a town, or populous neighborhood, or near a public road or highway, which produces noxious or offensive smells, to the annoyance of the neighborhood, or persons traveling along the public road, is a common nuisance, and is indictable. * *

It is not necessary that the smells should be injurious to health. It is sufficient if they be *offensive* to the senses.''

State vs. Wetherall & Dunsey, 5 Har. 487. (yr. 1854)
Liebig Mfg. Co. vs. Wales et al, 8 Del. Ch. 26. (yr. 1896)
State vs. Luce et al, 9 Houst. 396 at 399. (yr. 1885)
(See Sec. 4, par. 3 of this volume.)

(*b*) The Council, however, cannot authorize a nuisance, without express authority from the Legislature.

Comegys, C. J.: ''Now, as the people of a community have a right, of which nothing but an Act of Assembly can deprive them, to pure, untainted, uncontaminated, inoffensive air, it follows, that whatever of itself deprives them, or interferes with their enjoyment of such right, necessarily is, of itself, a nuisance of a public character, and indictable.'' * * ''Unless an Act incorporating a town gives the authorities there, either expressly or by necessary inference, the power to authorize a nuisance, none exists.''

State vs. Luce et al, 9 Houst. 396 at 398. (yr. 1885)

Contents of slaughter house or other offensive matter in street.

Sec. 3. If any person shall cast into any street, lane or alley of this city, or shall suffer to run or to be washed from any slaughter house, stable, privy, yard or place in his or her possession, into any such street, lane or alley, any blood, garbage, refuse, vegetable matter, carrion, dead animals, dung, filth or noisome or offensive matter; or if any person or persons shall suffer any skins, rags or matter to be in a noisome or offensive state within or upon property in his, her or their possession within the limits of this city, or shall deposit in any lot, street, lane or alley or any wharf or near any dwelling house, any contents of any slaughter house or stable, or any matter in an offensive state, or having deposited or put at any place within the limits of this city any matter that may be offensive, or shall place or leave in any market house any offal or offensive matter and shall fail to immediately remove the same upon the notification of any member or executive officer of the Board of Health, every person so offending shall be deemed guilty of a common nuisance and for every such offence shall be fined five dollars. Upon complaint to the Board of Health by any tenant of a property or other person of water standing upon the surface of a cellar, (*a*) and such place having been visited by a member of said board and declared a nuisance, it shall be abated within one week after due notice has been given to the owner or other person causing the nuisance, under a penalty of five dollars, to be collected as hereinafter provided.

Market house offal.

Penalty.

Water in cellars.

(*a*) In the case below cited, the Board of Health took proceedings to abate a nuisance resulting from a *wet cellar*. The part of the above

section relating to a wet cellar is set out and argued by the attorney in the case below cited, on p. 217. The Municipal Court found the defendant (Hartman) guilty, and the case was taken to the Superior Court on a writ of certiorari. The Court held it would not lie.

Cullen, J.: "Their action" (Board of Health) "is not a legal judgment such as is contemplated under the law, to which a *certiorari* at common law may issue."

Hartman vs. Wilmington, 1 Marv. 215 at 231. (yr. 1894)

(See Sec. 137, par. 2, "e" of the Charter.)

Stagnant water.

Offensive premises.

Drainage of water, etc., on premises of another.

If any person shall suffer any excavation or low ground upon property in his or her possession within the limits of this city to be filled or covered with stagnant water or other noisome matter so as to be unwholesome or offensive; or if any person shall suffer any dock, cellar, yard, stable (*a*) or other place in his possession or owned by him to be in a noisome or offensive state; or if any person owning or occupying property within the limits of this city or in case of the non-residence or absence of the owner, his or her agent having charge of such property, shall permit the water flowing from any hydrant, pipe or fixture connected with the conveyance of water to this city, or the refuse water from culinary or other purposes, or the water running off from the roof of any dwelling house, shop, store or shed or other building belonging to him or her or in his or her charge or occupation, or shall suffer and permit water from any other source, or shall suffer and permit noisome matter of any kind to flow or run from his or her premises, or premises which may be in his or her charge or occupancy, [or shall permit water from any other source], [or shall suffer and permit noisome matter of any kind to flow or run from his or her premises or premises which may be in his or her charge or occupancy to and upon the premises of any other person or persons so that the same shall or may become, on the premises of these last designated persons, stagnant, noxious or filthy], every person so offending shall be guilty of a common nuisance and for every such offence shall forfeit and pay a fine of ten dollars.

Ordinance, Aug. 10, 1882.

Ordinance, May 5, 1881.

Penalty.

(*a*) See as to a stable being "*badly kept,*" and when the same is a nuisance, generally, to the neighborhood, the case of

State vs. Luce et al, 9 Houst. 396 at 399. (yr. 1885)

Slaughter houses, erection of prohibited.

SEC. 4. From and after the passage of this ordinance it shall not be lawful to build or construct a slaughter house (*a*)

for the purpose of slaughtering cattle , sheep, swine or calves within the limits of this city, [and any person who shall offend against this provision shall be guilty of a nuisance, and shall upon conviction thereof forfeit and pay a fine of not less than five nor more than fifty dollars, and shall forfeit and pay a fine of five dollars for each and every day that the said slaughter house so illegally constructed shall be thereafter used for the purpose of slaughtering as aforesaid.] Ordinance, Sept. 7, 1882. Penalty.

(*a*) As to when a slaughter house, generally speaking, becomes a nuisance, see the case of
State vs. Luce et al, 9 Houst. 396 at 399. (yr. 1885)

All slaughter houses now erected within the city limits or that now or may hereafter be erected outside of the city limits but within one mile thereof shall, within thirty days after the passage of this ordinance, be furnished with either a tight two-inch oak floor laid in mortar or a paved brick floor, the bricks to be placed on edge, and whether said floor be of plank or of brick it shall have a gradual descent to a point where the blood and garbage will be received in some suitable vessel placed there for that purpose; and further, said vessel as aforesaid shall be emptied of its contents at some point without the limits of the city at least three times a week from the first day of May to the first day of November inclusive, and from the first day of November to the first day of May at least twice a week in like manner. Regulation of floors in slaughter houses.

If any person shall use a slaughter house or place belonging thereto within the limits of this city after the Board of Health have pronounced the same noisome or having used such slaughter house or place shall not, on the requirement of the Board of Health, immediately and effectually cleanse the same, every person so offending shall be guilty of a common nuisance, and shall for every such offence forfeit and pay a fine of twenty dollars. Cleansing slaughter houses. Penalty.

If any person shall exercise within the limits of this city any trade or manufacture that shall corrupt the air by offensive (*a*) smell, every person so offending shall be guilty of a Offensive trades.

common nuisance, and for every such offence shall forfeit and pay a fine of forty dollars.

(*a*) See Sec. 2, par. 2, p. 772 of this volume.

Duty of Executive Officer to visit slaughter houses.

All slaughter houses as aforesaid, shall be liable to the inspection of the Executive Officers of the Board of Health, whose duty is hereby declared to be to visit each and every slaughter house within the limits of the city once a week from the first day of May to the first day of November, and report the circumstances to the Board of Health, and for each and every neglect of this duty they shall be fined the sum of five dollars. (*a*)

(*a*) Read all of Sec. 4 in connection with Sec. 3, p. 789 of this volume.

Oyster cellars, etc.

Regulations.

Penalty.

SEC. 5. Every person keeping an oyster house or cellar, or owning or occupying, as a tenant, any wharf or wharves where oysters or clams are sold, within the limits of this city, shall be required to remove the shells from their houses, cellars, wharves or premises at least three times in each and every week between the first day of May and the first day of October of each year. If any person shall permit any oyster or clam shells to remain in or on their premises for a longer time than is allowed by this ordinance, or shall suffer them to become noisome or offensive, and injurious to the health of the city, every person so offending shall, for every such offense, forfeit and pay a fine of five dollars.

Hog pens.

Penalty.

Removal of pens.

SEC. 6. If any person having on his or her premises a hog or pig pen, (*a*) within the limits of this city, shall suffer the same to be in an unclean, filthy or unwholesome condition, and the Board of Health shall declare it to be so, every person so offending shall be guilty of a common nuisance, and shall forfeit and pay a fine of five dollars, and the further sum of one dollar for every twenty-four hours that the said nuisance shall remain unabated. The Board of Health shall have power to remove any hog pens in this city, which, in the opinion of the said board, it shall be deemed necessary or conducive to the health of the city to have removed.

(*a*) See Sec. 4, "a," and Sec. 2, "a," pp. 766 and 772 respectively of this volume.

Privy wells.

SEC. 7. If the owner or agent of any property in this city, shall suffer the privy wells thereon to be so full that any member or Executive Officer of the Board of Health shall, on inspection find the well to be filled within eighteen inches of the surface of the ground, said owner or agent shall be guilty of a nuisance, and said member or Executive Officer of the Board of Health shall direct said privy to be cleansed, and if such order be not complied with in three days, said owner or agent shall be fined in the sum of five dollars.

Cleansing privies.

The Board of Health shall have power to order any privy which, on inspection two members of the Board of Health shall declare to be offensive, to be cleansed and if not cleansed within the required time, the agent or owner shall be guilty of a common nuisance, and shall be fined five dollars.

Expense of cleaning.

The owner or agent of any property in this city shall, either of them, be liable to the excavator or other person employed, for the expenses of cleansing privy wells on such property, whether the cleansing shall have been ordered or contracted for by the owner or agent aforesaid.

Privies must be tight.

In respect to the vaults or privies already sunk near to lots of other persons, it shall be the duty of the owner and also of the holder of the property to which every such privy appertains, to secure and keep the vault of the same in such a manner that the contents shall not ooze or pass into the adjoining property, and in default thereof, every such owner and holder shall forfeit and pay a fine of five dollars, and a further fine of one dollar for every day on which such contents shall ooze or pass into such adjoining property, after the giving of judgment or sentence for the first fine.

Penalty.

Privy wells, how to be dug and constructed.

The vaults of every privy which may be constructed (a) within the city limits, shall be digged to the depth of twenty feet, or shall be at least six feet deep, at the option of the owner or proprietor; *provided, however,* that in case of a well six feet deep, it shall be built and floored with sound and well burnt bricks, laid on edge at the bottom, and in cement impervious to water, and the wall shall be puddled

with clay, one foot thick, except when the same is digged in solid clay ground; and also, *provided*, that when rocks, or water permanently springing or flowing into the well from beneath the surface of the ground, or other natural obstacle, render it expedient in the judgment of the [Building Inspector.] that such well should be made of the depth of twenty feet, such well may be sunk to any depth less than twenty feet and not less than six feet, as upon application to him may be allowed by the [Building Inspector.] who shall consider the circumstances of the particular case and direct such depth as he deems expedient.

Rocks.

Amendment, Ordinance of April 22, 1886.

(*a*) The Court held this provision should be given a prospective application—i. e., it should apply to those privies only which should be constructed *after* the passage of the ordinance.

The plaintiff having closed his case the Court was asked to instruct the jury,

"to bring in a verdict for the defendant below, appellant, for the reason that the city ordinance provides that "the vault of every privy which may be constructed within the city limits shall be * * * and no evidence has been offered to show that this vault was constructed *after* the passage of the ordinance."

Forbes, d. b. a. vs. The Mayor and Council of Wil., p. b. r., 1 Marv. 186. (yr. 1893)

Every person who may excavate or cause to be excavated a privy well within the city limits, shall, before walling or lining the same, give notice to the [Building Inspector,] whose duty it shall be to inspect it, and if it be excavated in accordance with the foregoing section he shall direct it to be walled, or walled, cemented and puddled, as the case may require, and after such walling, cementing and puddling, shall again notify the [Building Inspector,] who, being satisfied by personal inspection, or by a deputy, that this ordinance has been complied with, shall give a certificate to that effect, for which certificate the person so applying shall pay to the [Building Inspector,] a fee of fifty cents, and the [Building Inspector] shall make and preserve a record of all such certificates issued by him, and shall deliver, at the end of every three months, a list of the same to the Secretary of the Board of Health, who shall transcribe the same in a book provided for the purpose.

Inspection by Building Inspector.

Certificate.

Fees.

Record.

Every person failing to comply with the provisions of this ordinance shall forfeit and pay a fine of fifty dollars.

Penalty.

If any person shall remove to and deposit at any place within this city, or within one mile of the city limits, any night soil, or the contents of any privy well, every person so offending shall be deemed guilty of a common nuisance, and for every such offence shall forfeit and pay a fine of five dollars. *Provided, however,* that permission may be granted by the Board of Health to make such deposits anywhere outside of the city limits. Night soil.

The Board of Health shall grant license to so many and such persons as may be necessary to act as excavators, to displace all or any of them at pleasure, and appoint others in their places, and make such rules and regulations for their government as they may think just and proper; and if any person shall act as an excavator without license as aforesaid, within the limits of this city, every person so offending for every such offence shall forfeit and pay a fine of five dollars. License to excavators. Penalty.

SEC. 8. The Board of Health shall have power, in case of the prevalance, or of reasonable ground to apprehend the prevalence of malignant disease in this city, to direct specially, the cleansing of houses, cellars, yards, docks or such other places as the said board shall consider requisite or prudent for the preservation of the health of the city or for the mitigation of disease; (a) and if any such direction shall not be observed and fulfilled within the time therein prescribed, by the person to whom the same was given, the said board shall order an officer of the board or some other person or persons to carry the same into effect, and the expenses thereof shall be paid by the person to whom the direction was originally given unless the board shall otherwise order, and if payment of the same shall not be made on demand, the Treasurer of the board shall pay the same and shall recover the same with interest and costs from the person who ought to have paid the same, as debts of like amount are recoverable. The said board shall also have power in case of the prevalence, or reasonable ground to apprehend the prevalence of malignant disease in this city to establish hospitals, one or more, as they shall deem circum- Malignant diseases. Cleaning houses. Hospitals.

stances to require, and to make provision and regulations for such hospitals.

(*a*) See reference to this section on p. 217 of the attorney's brief in the case of
Hartman vs. Wilmington, 1 Marv. 215 at p. 217. (yr. 1894)

Removal of sick.

The said board shall also have power in case of the prevalence of malignant disease in this city, to remove persons suffering from contagious or infectious diseases from filthy and noxious habitations, or from noxious or peculiarly exposed places, to other habitations or hospital, whenever two-thirds of all the members of the board shall determine that the faithful care of the health of the city, or of any neighborhood thereof, requires such a measure.

Paving alleys, etc.

SEC. 9. The Board of Health shall have power to order the paving of any alley, court, yard or streets, not owned by the city; *provided*, that two members of the board shall declare such a course necessary for the preservation of the health of the neighborhood; and if the order of the said board be not executed within the required time, said board shall have authority to have the paving done, and to collect the expenses thereof *pro rata*, from the parties owning or using such alley, court, yard or street.

Infectious diseases on vessels.

SEC. 10. The Board of Health shall have authority to order the removal of any vessel then having or having recently had any contagious or infectious disease on board, which in the opinion of the board may be the cause of infection or contagion, to a point not less than one mile from the city limits under a penalty for refusal to comply with this order of one hundred dollars for every hour said order shall not be complied with.

Penalty.

Quarantine regulations.

And whenever the said board shall have evidence which it deems sufficient of the prevalence of any infectious or contagious disease in any place in the United States or elsewhere, it shall have power, with the concurrence of two-thirds of all the members of the board, to regulate or interdict the intercourse by land and water between such places and this city and neighborhood to the distance of one mile from the boun-

daries of the city, for the purpose of preventing the introduction of such disease into this city and neighborhood. The regulations or interdictions shall be by proclamation, and it may be confined to the city or extended to the neighborhood. A vote shall be taken in the board at least every tenth day after issuing such proclamation upon the question of continuing it, and if upon such question there shall not be two-thirds of all the members of the board for the continuance the proclamation shall expire. If a vote shall not be so taken the proclamation shall expire at the end of the tenth day from the day exclusively of the vote last taken, whether for the issuing or for the continuance of the proclamation. If any ship, packet, steamboat or vessel shall be brought within the limits of this city or within one mile of the boundaries thereof, or if any goods, wares or merchandise, or any passenger or other person shall be landed or brought on shore within the limits of this city or within one mile of the boundaries thereof, from any ship, packet, steamboat or vessel, or if any goods, wares or merchandise, passenger or person landed at a greater distance than one mile from the boundaries of this city with an intention to be brought to this city, shall be brought to this city or within one mile of its boundaries in contravention of any proclamation issued as aforesaid, the master or person having charge of such ship, packet, steamboat or vessel and every owner thereof consenting or being privy to the bringing of the same, and every owner and consignee of such goods, wares or merchandise consenting or being privy to the bringing of the same, and all persons aiding and abetting in the premises, shall each forfeit and pay a fine of five hundred dollars, and the Board of Health shall have power to order the immediate removal of such vessel, packet, steamboat or goods, wares or merchandise to a distance not exceeding one mile from the boundaries of this city and to charge any officer or other person with the execution of such order, and the expenses shall be paid by the master or person having charge of such ship, packet, steamboat or vessel, or the owner or consignee of such goods, wares or merchandise; and if such payment be refused the Treasurer of the board shall pay the same and recover the same with interests and costs from any per-

Violation of quarantine regulations.

Penalty.

son liable, as debts of like amount are recoverable. But the master of any ship, packet, steamboat or vessel, or his agent, shall be at liberty to come once on shore for the purpose of consulting a health officer or doing business at the Custom House, employing a suitable boat's crew, provided the crew do not leave the boat and his stay does not exceed two hours.

Exception: A ship, packet, steamboat or vessel bound to a place above Wilmington and passing directly up the creek without unloading any goods, wares, or merchandise or landing by any passengers, contrary to the preceding provisions, shall not be within this ordinance.

Violations. If any person shall bring or aid in bringing, or supply any carriage, horse or conveyance for bringing to this city, or within one mile of the boundaries thereof, any person or any goods, wares or merchandise in contravention of any proclamation issued as aforesaid, every such person shall forfeit and Penalty. pay a fine of three hundred dollars.

Violations. If any person shall come to or stay in this city or within one mile of the boundaries thereof, in contravention of any proclamation issued as aforesaid, every such person shall for every such offence forfeit and pay a fine of forty dollars, and the further sum of ten dollars for every twenty-four hours Penalty. continuance in this city or within one mile of the boundaries thereof in contravention of such proclamation.

Violations. If any person shall entertain, harbor, receive or keep any person, goods, wares or merchandise, coming or brought to this city or within one mile of the boundaries thereof, in contravention of any proclamation issued as aforesaid, every such Penalty. person shall forfeit and pay a fine of forty dollars, and the Board of Health shall have power to order the immediate removal of such person, goods, wares and merchandise to a distance not exceeding one mile from the boundaries of this city, and the expense shall be paid by the person having the goods, wares or merchandise in possession or by the owner thereof, and if such payment be denied the Treasurer of the board shall pay the same and recover the same, with interest and

costs from any person liable, as debts of like amount are recoverable.

Ordinance, June 27, 1895. Medical attendants in cases of epidemic, etc., shall report to Secretary of Board of Health within six hours after the diagnosis.

[All medical attendance in cases of Epidemic or Asiatic Cholera, Yellow Fever, Small-pox, Varioloid, Typhus Fever, Typhoid Fever, Scarlet Fever, Membranous Croup and Diphtheria, shall report in writing to the Secretary of the Board of Health within six hours after the diagnosis in such case or cases occurring between six o'clock A. M. and six P. M., or within eighteen hours if such diagnosis be made between six o'clock P. M. and six A. M., upon such blanks furnished by the Board of Health for such purpose. Such report shall state name, sex, age, color, nation, residence and duration of disease at time of report.

Physicians shall report the recovery of such persons.

It shall be the duty of every physician or other person who shall have charge or be in medical attendance upon any person afflicted with Cholera, Yellow Fever, Small-pox, Varioloid, Typhus Fever, Scarlet Fever, Diphtheria and Membranous Croup within the limit of this city, or within one (1) mile thereof, after the recovery of such person upon careful and satisfactory examination, to report said fact to the Secretary of the Board of Health.

To notify the Secretary of the Board of Education.

It shall be the duty of the Secretary of the Board of Health after the filing of said report to notify the Secretary of the Board of Education of such case or cases.

No child from said house shall be permitted to attend public or private school.

It shall be the duty of the Secretary of the Board of Education immediately upon notice from the Board of Health to notify the principal of each school of the facts of such disease, as are required by the preceding paragraph, and no child from said house shall be permitted to attend any public or private school, or place of public assemblage, or appear on the public streets, or in the parks until after ten (10) days of the death or convalescence of said patient.

Any medical attendant who shall fail to comply with the rules shall pay a fine of $15.00.

If any medical attendant or any other persons who are required to observe these regulations shall fail to observe and

comply with the same, he or she shall forfeit and pay a fine of fifteen (15) dollars.

Board of Health are empowered to quarantine contagious diseases.

The Board of Health are hereby empowered to adopt such means of quarantine in contagious or epidemic diseases as in their judgment the health of the city may require, and any person who shall fail to observe or comply with the directions of the Board of Health in such cases, shall, upon conviction before the Municipal Court, forfeit and pay a fine of twenty (20) dollars.

Cleansing premises where nuisance exists.

SEC. 11. The board, when satisfied after an examination, that any cellar, room, tenement or building within its jurisdiction, occupied as a dwelling place, has become by reason of the number of occupants, or want of cleanliness or other cause, unfit for such purpose, and a cause of nuisance or sickness to the occupants, or the public, may direct the owner or owners, or occupants thereof, to have the premises properly cleansed, or if they see fit, require the occupants to remove or quit the premises within such a time as the board may deem reasonable. (*a*) If the person or persons so notified, or any of them, neglect or refuse to comply with the direction of the board, the board may cause the premises to be properly cleansed at the expense of the owners, or may remove the occupants, forcibly, and close up the premises, and they shall not again be occupied as a dwelling place without permission in writing of the board; and if such owner or owners refuse to pay the expenses incident to the execution of such orders, the Treasurer of the board shall recover the same with interest and costs from the person who ought to have paid the same, as debts of like amount are recoverable.

Notice.

Refusal to cleanse.

(*a*) See reference to this provision in attorney's brief on p. 217 of the case of
Hartman vs. Wilmington, 1 Marv. 215. (yr. 1894)

Right to enter any premises.

Whenever the Board of Health shall think it necessary for the preservation of the lives and the health of the citizens to enter a place or building within their jurisdiction, for the purpose of examining into and destroying, removing or preventing any nuisance, source or filth, or cause of sickness, and

shall be refused such entry, any member of the board may make complaint under oath to the [Judge of the Municipal Court,] stating the facts of the case as far as he has knowledge thereof. The [Judge of the Municipal Court] shall thereupon issue a warrant directed to any Constable of the county, commanding him to take sufficient aid, and being accompaned by two or more members of the Board of Health, between the hours of sunrise and sunset, repair to the place where such nuisances, source of filth, or cause of disease may exist, and the same destroy, remove or prevent, under direction of such members of the board.

Refusal.

Warrant.

SEC. 12.[1] It shall not be lawful hereafter for any cemetery company or superintendent of any cemetery or burial place, to disinter and remove from the grounds or enclosures of said cemetery or burial place, the remains of any person who may have died of small-pox or other infectious or contagious disease, within six months immediately preceding the time of such disinterment.

Disinterment of bodies.

Before any disinterment and removal shall take place, the superintendent of the cemetery or burial place, or the person acting as superintendent or grave-digger, shall first have in his possession a written or printed permit therefor, duly signed by the Registrar of Deaths and Burials, setting forth the name, time of death, and nature of the disease of the person to be exhumed and removed.

Permit.

It shall not be lawful for any railroad, steamboat or transportation company, or for any person or persons, by either public or private conveyance, to bring into this city the remains of any person who may have died of any infectious or contagious disease, within a period of six months immediately preceding the time of such conveyance, and at no time thereafter, unless a permit, as provided for in the second paragraph of this section, shall be first had for that purpose.

Bringing dead bodies into city.

* * * * * * * * * * *

Ordinance of Feb. 2, 1888.

The burial of all persons having died within the limits of the city from Epidemic or Asiatic Cholera, Yellow Fever,

Private burial.

1. As to Sec. 12, see p. 792 of this volume.

Ordinance, Dec. 23, 1897. Ordinance, Dec. 11, 1890.

Small-pox, Scarlet Fever (* *) Diphtheria [or Membranous Croup] shall be private, and shall take place within [thirty] hours after death without any exposure of the body to public view.

Amendment, ordinance of Feb. 2, 1888. Penalty.

[In all cases of violation of any of the provisions of this section the party or parties so offending shall upon proof thereof, before the Municipal Court, be fined fifty dollars for each offence.]

Weeds on vacant lots.

SEC. 13. If the owner, agent or tenant of any vacant lot within the city limits shall allow weeds or rubbish to collect thereon, and shall refuse or neglect to remove the same within five days after receiving notice from an Executive Officer of the Board of Health, such owner, agent or tenant shall be subject to a penalty of five dollars for such refusal or neglect, with an additional penalty of one dollar for each day the nuisance is permitted to remain after the expiration of the notice.

[SEC. 14.]* * * * * * * * * *

Street scrapings.

SEC. 15. It shall not be lawful for the Street Commissioner or any person in his employ, or any other person, to use the scrapings and sweepings of the public streets in filling up other streets, in localities where such deposits will prove detrimental to the health of the neighborhood, nor shall any such scrapings or sweepings be placed on any vacant lot.

Privy wells in cellars.

SEC. 16. It shall not be lawful for the owner or tenant of any house now erected or that may be hereafter erected within the limits of the city, to dig a sink or privy well in the cellar of said house. Any person violating the provision of this section shall be liable to a penalty of twenty dollars.

Penalty.

Fines, etc.

SEC. 17. All fines and penalties imposed by the provisions of this ordinance shall be collected before the [Municipal Court] at the suit of any officer or member of the Board of Health.

SEC. 18. All ordinances, or parts of ordinances, inconsistent with or contrary to the provisions of this ordinance, be and the same are hereby repealed, made null and void.

Original Act.

Passed at City Hall, April 15, 1856.

AN ORDINANCE to provide for the more effectual protection of the public health of this city.

BE IT ORDAINED, by The Council of Wilmington.

Cases of certain diseases to be placarded.

SECTION 1. Upon receipt by the Secretary of the Board of Health of a report from a physician of the existence of a case of Scarlet Fever, Diphtheria, Diphtheritic Croup or Membranous Croup, he may at once place or caused to be placed in a conspicuous place or places upon or near the house or premises in which said case may be located, a placard or placards, to be no larger than six (6) inches by nine (9) inches, upon which shall be printed in large letters the name of the disease from which the person or persons in said house or premises may be suffering, as the case may be.

Size of placard.

SEC. 2. All cases that shall be reported as Diphtheritic Croup or Membranous Croup shall be placarded as Diphtheria.

How long placard to remain.

SEC. 3. The placard or placards shall remain on the house or premises until after the attending physician has reported to the Secretary of the Board of Health that the patient has entirely recovered or until after the death and burial of the patient, and the house or premises has been thoroughly fumigated by an officer of the Board of Health.

Penalty for removing or defacing.

SEC. 4. In any case where such placard or placards are removed, covered up, defaced or destroyed, the party or parties so offending, shall, upon conviction thereof before the Municipal Court, forfeit and pay a fine of ten (10) dollars.

Approved December 16, 1903.

AN ORDINANCE concerning nuisances injurious to the health of the city.

SECTION 1. * * * * * * * *

Privy wells, cleaning thereof.

Permit.

Penalty.

It shall not be lawful for any person to cleanse, or cause to be cleansed, any privy well in this city during the months of July and August, unless such privy well shall have been cleansed within two months previously without having first obtained from the Secretary of the Board of Health a permit, authorizing the same to be done, for which he shall pay to the Secretary for the use of the city the sum of two dollars, and every person so offending shall be guilty of a common nuisance, and shall be liable to a fine of five dollars, to be imposed by the [Municipal Court.]

Gutters obstructed or filthy.

Stagnant water on surface of lots or in cellars.

Yards or stables in offensive condition.

Penalty. Proviso.

If any person suffer the gutter before the house or other building, or improved or inclosed lot in his or her possession within the limits of this city, between Tatnall and Walnut streets, inclusive of said streets, to remain obstructed, or if any person shall suffer water to stand upon or over the surface of any cellar in his or her possession within said limits, inclusive as aforesaid, for the space of forty-eight hours, or if any person shall suffer the cellar, yard or stable in his or her possession within the limits of this city, to be in an offensive state, every person so offending shall be guilty of a common nuisance, and for every such offence shall forfeit and pay a fine of four dollars. *Provided*, that in case of a cellar with water standing (*a*) upon it, two members of the Council or of the Board of Health shall have first declared it to be a nuisance.

(*a*) In case of prosecution under the above ordinance the charge should be in the language of the ordinance. If a cellar have water "standing upon it," it should be so charged, and not simply be a charge of a "wet cellar." (215) (Attorney's brief.)
Hartman vs. Wilmington, 1 Marv. 215 at 217. (yr. 1894)

SEC. 2. * * * * * * * * *

Duties of owners of privy vaults.

In respect to the vaults of privies already sunk near to lots of other persons, it shall be the duty of the owner, and also the holder of the property to which every such privy appertains, to secure and keep the vaults of the same in such a

manner that the contents shall not ooze or pass into the adjoining property, and in default thereof, every such owner and holder shall forfeit and pay a fine of five dollars, and further fine of one dollar, for every day on which such contents shall ooze or pass into such adjoining property after the giving of judgment or sentence for the first time. Contents of privy must not ooze out on adjoining property. Penalty, $5.00.

A tenant incurring expense to secure or keep a vault as aforesaid shall have a right to make from the rent a just deduction. Tenant.

* * * * * * * * * *

SEC. 3. (*a*) From and after the passage of this ordinance it shall not be lawful to build or construct a slaughter house, for the purpose of slaughtering cattle, sheep, swine or calves, within the limits of this city, without permission first had and obtained for that purpose from the City Council. Slaughter houses.

(*a*) See Sec. 4, p. 775 of this volume (amendment of 1882), practically repealing the above Sec. 3.

All slaughter houses now or hereafter erected, shall, within thirty days after the pasage of this ordinance, be furnished with either a tight two-inch oak floor, laid in mortar or a paved brick floor, the bricks to be placed on edge, and whether said floor be of plank or of brick, it shall have a gradual descent to a point, where the blood and garbage will be received in some suitable vessel placed there for that purpose; *and further*, said vessel as aforesaid, shall be emptied of its contents at some point without the limits of the city, at least three times a week, from the first day of May to the first day of November inclusive, and from the first day of November to the first day of May, at least twice a week in like manner. Floors of slaughter houses. Removal of blood and garbage.

Any person or persons violating the provisions of this ordinance, shall be guilty of a common nuisance, (*a*) and shall forfeit and pay the sum of five dollars for the first offence, and a further sum of five dollars for every twenty-four hours that the said nuisance is allowed to remain on the premises after being notified to remove it by the [District] Constables. Penalty. Ordinance, July 3, 1873.

(*a*) Slaughter houses (since the amendment of 1882) cannot now

be constructed "for the purpose of slaughtering cattle, sheep, swine or calves within the limits of the city." (Sec. 4, p. 775 of this volume.) And if used for any purpose other than the above, they must not become a nuisance to the neighborhood.

Comegys, C. J.: "If one were to erect a * * slaughter house * * in a town, and a few people only in that immediate neighborhood were annoyed by it, there would be no indictable offense; if the annoyance extended to those *generally* about there, the owner would be indictable, although in point of fact only a small neighborhood of the town, for example, a single square, where there many squares, was within the scope of the foul smells."

State vs. Luce et al, 9 Houst. 396 at 399. (yr. 1885)

The Council, if it so desired, without *express* authority from the Legislature, could not permit one to create, or continue, a nuisance. id. 397-8.

Inspection.

All slaughter houses as aforesaid, shall be liable to the inspection of the [District] Constables, whose duty it is hereby declared to be, to visit each and every slaughter house within the limits of this city, once a week, from the first day of May to the first day of November, and report the circumstances to the Mayor, and for each and every neglect of this duty, he shall be fined the sum of five dollars.

Notice for removal.

It shall be the duty of the Mayor, upon the report of the [District] Constables of the existence of a nuisance as aforesaid, to issue notice forthwith, requiring its removal. (*a*)

(*a*) The Board of Health has full charge of all the above matters.

Fines.

The fines, forfeitures and penalties accruing under this ordinance shall be recovered before the Municipal Court of this city.

All ordinances, and parts of ordinances, inconsistent herewith are hereby repealed.

Passed at City Hall, October 13, 1856.

AN ORDINANCE providing for general gratuitous vaccination.

Ordinance. Dec. 28, 1882.

SECTION 1. [For vaccine purposes the city shall be divided into four parts, as follows, to wit:

Districts.

The First district shall be all of that part of the city south of Sixth street, extended easterly to the city line, and

east of Market street extended southerly to the city line; the Second district shall be all that part of the city south of Sixth street extended westerly to the city line, and west of Market street extended southerly to the city line; the Third district shall be all that part of the city north of Sixth street extended to the city line easterly, and east of Market street extended northerly to the city line; the Fourth district shall be all that portion of the city north of Sixth street extended westerly to the city line, and west of Market street extended northerly to the city line.]

Vaccine physicians.

Election, term and salary.

Ordinance, Dec. 28, 1882.

SEC. 2. There shall be elected at the first stated meeting of Council in each year [four] public officers to be called Vaccine Physicians, one for each of the districts, whose terms of office shall continue for one year; the salary of each shall be [one] hundred dollars per annum, payable upon the full and satisfactory fulfillment of their duties as by this ordinance prescribed.

Duties.

Quarterly visits.

SEC. 3. It shall be the duty of each Vaccine Physician to vaccinate or revaccinate all persons who may call upon him, if they reside in his district and are not protected by vaccination; it shall also be his duty to make quarterly visits through his district for the purpose of ascertaining faithfully where there are any unprotected poor persons, and to vaccinate or revaccinate all such as are not unwilling to have it done.

Manner of vaccination.

SEC. 4. The vaccination or revaccination must be performed in the most skillful and professional manner, and each subject vaccinated must be seen by the physician, if possible, twice after the insertion of the matter.

Annual report.

SEC. 5. It shall be the duty of each Vaccine Physician to report to Council at the end of each year the name, age, color and residence of each person he has vaccinated or revaccinated during the year.

Official sign.

SEC. 6. It shall be the duty of each Vaccine Physician, within one week after his election, to have placed upon the

outside of his office, a sign, with the words "City Vaccine Physician" plainly painted thereon.

Vacancy.

SEC. 7. Any vacancy in the office of Vaccine Physician, from death, resignation or otherwise, shall be filled by the Council only for the remainder of the term.

Passed at City Hall, February 9, 1860.

AN ORDINANCE concerning the introduction and removal of dead bodies within the limits of the city.[1]

Disinterment or removal of dead bodies.

SECTION 1. That it shall not be lawful hereafter for any cemetery company or superintendent of any cemetery or burial place to disinter and remove from the grounds or enclosures of said cemetery or burial place the remains of any person who may have died of small-pox, or other infectious or contagious disease, within six months immediately preceding the time of such disinterment.

Permit.

SEC. 2. That before any disinterment and removal shall take place the superintendent of the cemetery or burial place, or the person acting as superintendent or grave digger, shall first have in his possession a written or printed permit therefor, duly signed by the Registrar of Deaths and Burials, setting forth the name, time of death and nature of the disease of the person to be exhumed and removed.

Bringing dead bodies into city.

SEC. 3. That it shall not be lawful for any railroad, steamboat or transportation company, or for any person or persons by either public or private conveyance, to bring into this city the remains of any person who may have died of any infectious or contagious disease within a period of six months immediately preceding the time of such conveyance, and at no time thereafter, unless a permit as provided in the second section of this ordinance shall be first had for that purpose.

Permit.

Penalty.

SEC. 4. That in all cases of violation of any of the provisions of this ordinance the party or parties so offending

1. See p. 785 (Sec. 12) of this volume.

shall, upon proof thereof before the [Municipal Court,] be fined fifty dollars for each offence.

Passed at City Hall, May 7, 1874.

AN ORDINANCE providing for the appointment and prescribing the duties of the City Registrar.[1]

Act of March 15, 1881. 16 D. L. 672.

* * * * * * * * * *

City Registrar. Act of April 13, 1883.

SECTION 1. There shall be appointed on the first Thursday in July, A. D. [1886], and on the first Thursday in July in each fifth year thereafter, a City Registrar, (*a*) who shall be Registrar of Deaths, Births and Marriages, and the Secretary of the Board of Health. He shall receive, as Registrar of Births, Deaths and Marriages, a salary of eight hundred dollars per annum.

Salary.

(*a*) In 1891 one Lee was ousted from the above named office by one Colquhoun, and Lee brought an action of *assumpsit* against the city for salary. As he had not previously tested and established his right to the office by quo warranto proceedings, the Court held that he could not recover.

Marvel, J.: If * * "Lee desired to maintain his action of assumpsit against the defendant" (city) "for the amount of the salary of said office * * he should first have had his right to the office passed upon by a competent tribunal in a proceeding for that purpose."

Lee vs. Wilmington, 1 Marv. 65 at 72. (yr. 1893)

(See Sec. 108, "a" of the Charter.)

Act of April 13, 1883. 17 D. L. 108.

The duties of the said City Registrar, in addition to those defined in the section of the Act of Assembly above recited, shall be as follows, viz:

Duties.

He shall, in keeping the record of deaths, births and marriages, as provided aforesaid, record names, dates, ages, sex, color, nationality and other statistics as hereinafter provided. He shall keep on hand, at all times, suitable blanks to secure uniformity and despatch in the registration hereinafter provided, and shall supply said blanks free of cost to all physicians, midwives, householders, coroners, clergymen, magis-

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1. For the appointment of City Registrar, see Sec. 108 of Charter as amended.

trates or other persons who are by law required to report vital statistics to the Registrar's office.

Report.

He shall, during the month of January in each year, make a report to the Board of Health containing all matters of interest pertaining to his office, including classified tables of deaths, births and marriages during the previous year, together with such recommendations as he may deem proper.

Report to be sent to Council.

The Board of Health shall transmit this report to the City Council, together with such other reports or recommendations as it may consider necessary, or that may hereafter be provided for.

Office hours.

The office hours of the said City Registrar shall be from 9 o'clock A. M., till 12 o'clock noon, and from 2 to 5 o'clock, P. M., daily, Sunday excepted.

Duty of clergy, etc., solemnizing marriage.

Duty of physicians and midwives to register.

Removal.

Exceptions.

SEC. 2. It shall be the duty of clergymen of all denominations, also every magistrate, and of other persons by or before whom any marriage may hereafter be solemnized or contracted, and of every practicing physician and of every practitioner of midwifery, on or before the first day of September next ensuing, to report his, her or their names and places of residence to the City Registrar, and it shall be the duty of said Registrar to have the same properly registered in index form in suitable books, in the event of any of the persons above specified removing to any other place of residence, it shall be their duty to notify the City Registrar of the fact within thirty days after such removal, except when the persons removing shall cease to act in such official capacity as makes them subject to the provisions of this ordinance.

Report of births.

SEC. 3. It shall be the duty of the physician, parents of the child, midwife, or one of them, within ten days after the birth of any child to file notice thereof with said Registrar, such notice to contain a full, truthful and complete statement of all such facts as may be required by the Registrar, and to be filled out and written in and upon such blank or blanks as may be furnished by the Registrar.

SEC. 4. It shall be the duty of every physician who has attended any person, deceased, during last illness, or in case there shall have been no attending physician, then it shall be the duty of the householder, in whose family any death occurs, and in case of any inquest being had, it shall be the duty of the Coroner holding such inquest to make return to said Registrar of the facts of such death. Such return to be in writing, and to contain a full, truthful and complete statement of all such facts as may be required by the Registrar, and to be filled out and written in such blank or blanks as may be furnished by the Registrar. Upon the return of such certificate the said Registrar shall issue a permit, signed by him, authorizing the removal for burial of the body of the person deceased; and no keeper of any hearse, hackney coaches, or other person, shall receive, carry or convey said body from any premises, and no undertaker or other person shall remove, or assist in the carrying or conveying of said body from any premises, and no sexton, undertaker or other person, shall bury or assist in the burial of any body except upon production to him or them of such certificate, duly issued by the Registrar. It shall be the duty of any undertaker or other person, before they shall remove any dead body from the city, to obtain a health permit from the Registrar, and to file a notice containing a full, truthful and complete statement of all such facts as may be required by the Registrar, to be filled out and written on such blank or blanks as may be furnished by the Registrar.

Report of deaths.

Burial permits.

Permits for removal of bodies.

SEC. 5. It shall be the duty of every clergyman and every magistrate and every other person, by, or before any marriages may be solemnized or contracted, to make a faithful return of the same within ten days thereafter to the City Registrar, in the form of a certificate, which shall set forth, as far as the same can be ascertained, the full name of the husband, his occupation, the place of his birth, his residence and age, the date of marriage, the full name of wife, previous to said marriage, and her age, the color of the parties, and the place where and the name of the clergyman or other person by whom the marriage ceremony was performed, and the witnesses, if any, to such marriage ceremony.

Reports of marriages.

Registration books, form of.

SEC. 6. In order to secure uniformity and despatch in the registration herein provided for, the books shall contain upon the margin of each page, printed titles, with corresponding blanks for suitable entries for marriages and births in the order, to wit: Marriages, full name of husband, occupation, residence, (birthplace,[1]) age, when married; full name of wife previous to marriage, residence, birthplace, age when married, time of marriage, color of parties, ceremony employed, name of person performing the marriage, residence of the last named person, and witnesses to such marriage, date of certificate, date of registration. Births, full name of the child, sex, color, full name of the father, his occupation; full name of mother, day, month and year of the birth, street and number of house where born, name of physician or other person signing certificate, his residence, date of certificate, date of registration.

Penalty.

SEC. 7. Any person neglecting or refusing to comply with any of the provisions of this ordinance, and any person violating any of its provisions, shall be subject to a fine of ten dollars for every such violation or neglect or refusal, to be recovered before the [Municipal Court.] in the name of the Registrar, and paid into the city treasury.

SEC. 8. The said Registrar shall be provided with a seal of office, and for furnishing a certified copy of any record of his office, under hand and seal, he shall receive a fee of fifty cents, to be paid by the parties applying for the same.

Passed at City Hall, June 27, 1881.

AN ORDINANCE to provide for the collection and removal of garbage.

BE IT ORDAINED, by The Council of Wilmington.

SECTION 1. That as soon as practicable after the passage of this ordinance, The Council (*a*) of Wilmington shall by

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1. So in original.

contract provide for the collection and removal of garbage from the dwellings, buildings and other places within the limits of the City of Wilmington, to such place as shall be selected for the garbage disposal plant of said city. Contract for removing garbage.

(*a*) See note "a" to Section 3 of this ordinance.

SEC. 2. Such contracts shall be for a term ending on the thirty-first day of May, A. D. 1909. Term of contract.

SEC. 3. The Council (*a*) shall, during the month of May, A. D. 1909, and during the month of May every third year thereafter, award contracts for the collection and removal of garbage as hereinbefore provided for, for a term of three years beginning on the first day of June thereafter. Terms of future contracts.

(*a*) The ordinance expressly says that "*The Council*" shall award the contracts. The Mayor has nothing to do with them, and when "The Council" awards the contracts, it is the Mayor's duty to sign the same and affix the corporate seal of the city to them. The Council awarded garbage contracts. The Mayor refused to sign them.

Lore, C. J.: "As the ordinance vests in the Council the exclusive right to determine any alleged failure of performance and award these contracts, and the function of the Mayor in signing and affixing the seal of the city is merely ministerial, we think that he ought to do it."

McCormick vs. Fisher, 5 Penn. 273 at 276. (yr. 1903)

SEC. 4. Contracts awarded under this ordinance shall be let to the lowest and best bidder or bidders after advertisements inserted two times each week for at least two weeks in each of two daily newspapers published in the City of Wilmington and the last advertisement shall not be less than five days before the last day on which bids will be received. The Council shall also have authority to advertise for bids in such other newspapers, journals or periodicals as it may by resolution direct. Contract to lowest and best bidder.

SEC. 5. The word "garbage" shall include all kitchen and table waste of an animal or vegetable nature, swill, offal, vegetables, fruits, meats, fish, bones, fat, carrion, market refuse, cats and dogs, all putrescible matter, both solid and liquid, animal and vegetables, which may result from the preparation of meat, fish, fowl and vegetables of any charac- Garbage defined.

ter, or which may be caused by the decay of foodstuffs or by handling, storing or dealing in the same.

Garbage to be removed by contractors.

SEC. 6. All garbage that may accumulate in any public place, or which shall be placed in receptacles at a convenient and accessible place, shall be collected and removed by the contractors to the disposal plant, and any contractor, or the officer, agent or employees of such contractor, or any other person, who shall transport any garbage to any place other than the disposal plant or who shall sell or otherwise dispose of such garbage, shall, upon conviction in the Municipal Court of the City of Wilmington, forfeit and pay a fine of not less than five dollars nor more than fifty dollars for each and every such violation of this section.

Garbage to be taken to disposal plant only.

Penalty.

Mixing ashes with garbage prohibited.

SEC. 7. Any person who shall wilfully place any ashes, rubbish, waste paper, or other substance not above described or defined as garbage, in any receptacle with garbage that is to be collected by the contractor, shall, upon conviction in the Municipal Court of the City of Wilmington, forfeit and pay a fine of one dollar for each and every offence.

Penalty.

City divided into four collection districts.

SEC. 8. The collection districts of the City of Wilmington shall be four in number divided as follows:

The First District shall include all that part of the city east of Market street and south of Sixth street.

The Second District shall include all that part of the city east of Market street and north of Sixth street.

The Third District shall include all that part of the city west of Market street and south of Sixth street.

The Fourth District shall include all that part of the city west of Market street and north of Sixth street.

Time of collection of garbage.

SEC. 9. From June first to October fifteenth in each year, all garbage shall be collected at least three times each week, and from October fifteenth to June first, collections shall be

made at least two times each week. When collections are made but three times each week, such collections must be on alternate week days, and when collections are made but two times each week, not less than two full days must intervene between such collections. Whenever any contractor under the provisions of this ordinance shall neglect or refuse to collect the garbage in his district according to the requirements of this section within six hours after being notified so to do by the Board of Health of the City of Wilmington, said Board of Health shall cause such garbage to be collected and removed to the disposal plant, and the Secretary of said Board shall certify to the Council, on the first meeeting night in each month the number of collections made by said Board of Health from each district during the preceding calendar month, and the Council shall deduct from any moneys due the respective contractors, the sum of fifty cents for each collection so made by the Board of Health in each district.

On failure to collect by contractors, Board of Health shall collect.

Council shall make deductions from amount due contractors.

Sec. 10. The contractor shall not be required to remove a greater quantity of garbage than one barrel each regular collection day from any one dwelling or building except from restaurants, apartment houses and hotels, but the occupant of such dwelling or building, except where such building be a restaurant, apartment house or hotel, shall be required to have all garbage in excess of such amount transported to the disposal plant, and upon failure to have such excess garbage transported as above provided for within forty-eight hours after the same shall have accumulated, such occupant shall, upon conviction in the Municipal Court of the City of Wilmington, forfeit and pay a fine of one dollar for each and every offence.

Limit in amount of garbage from each building.

Failure to remove surplus.

Penalty.

Sec. 11. All garbage shall be collected in carts with close covers and the bodies of such carts must be water-tight and of solid metallic construction. Each of said carts shall have placed thereon in letters and figures at least six inches high, painted on each side thereof, the words "City Garbage Cart" with the number of the district and cart, and upon failure of the contractor to comply with any of the provisions of this section, he shall, upon conviction, forfeit and pay a fine of five

Metal carts.

"City Garbage Cart" on each cart.

Penalty.

dollars, and an additional fine of two dollars for each day such violation shall continue.

Ordinance, April 1, 1909.

[1][Any officer, agent or employee of such contractor, or any other person, who shall collect such garbage, shall at all times while engaged in the collection thereof, (and except when in the act of emptying garbage into the garbage carts)

Carts must be kept closed.

keep the lid or lids of such carts closed, and upon failure so to do, the person so offending shall, upon conviction in the Municipal Court of the City of Wilmington, forfeit and pay a fine of not less than one dollar or more than five dollars for each and every offence.]

Contractors bonds.

SEC. 12. The person, firm or corporation to whom contracts shall be awarded under the provisions of this ordinance shall be required to enter into bond with surety to be approved by the Mayor and President of Council in the sum of two thousand dollars, said bond to be conditioned for the faithful performance of the contract.

Certified check with bids.

SEC. 13. All proposals for the performance of the work required under this ordinance shall be accompanied by a certified check on a bank or trust company doing business in the City of Wilmington for the sum of two hundred dollars for each and every district as a guarantee for the proper execution of the contract.

Each employee must wear badge.

SEC. 14. Each employee of the contractor while engaged in collecting garbage shall be designated by a number plate which shall be plainly displayed by said employee, and if such employee shall violate the provisions of this section while engaged in the collections of garbage, he shall, upon conviction,

Penalty.

forfeit and pay a fine of one dollar for each and every offence.

Contractors when paid.

SEC. 15. Contractors awarded contracts under the provisions of this ordinance shall be paid for such work on or be-

1. This amendment does not appear in the ordinance book of Council as having either been passed by the Council or approved by the Mayor, but the minutes of the Council on April 1, 1906, show that it was passed on that date.

fore the second meeting night of the Council in each month for the preceding calendar month.

Duty of Board of Health.

SEC. 16. It shall be the duty of the Board of Health to enforce the provision of this ordinance in the manner herein provided.

SEC. 17. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.[1]

Approved April 26, 1906.

AN ORDINANCE to provide for the sanitary disposal of garbage.[1]

BE IT ORDAINED, by the Council of Wilmington.

Contract for sanitary disposal of garbage.

SECTION 1. That as soon as practicable after the passage of this ordinance The Council (*a*) of Wilmington shall by contract provide for the sanitary disposal of all garbage collected within the limits of the City of Wilmington, such contract or contracts to be for a term ending on the thirty-first day of May, A. D. 1915.

(*a*) See Sec. 3, "a," p. 797 of this volume.

When awarded.

SEC. 2. The Council (*a*) shall during the month of May, A. D. 1915, and during the month of May every ninth year thereafter, award contracts for the sanitary disposal of garbage for a term of nine years beginning on the first day of June thereafter.

(*a*) See note "a" to Sec. 1 of this ordinance.

Advertising for bids.

SEC. 3. Contracts awarded under this ordinance shall be let after advertisements inserted two times each week for at least two weeks in each of two daily newspapers published in the City of Wilmington and the last advertisement shall not be less than five days before the last day on which bids will be received. The Council shall also have authority to ad-

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1. The awarding of contracts for the collection and disposal of garbage is now made by the Board of Health, and the said Board has full control and management of the city crematory.

This ordinance, and the two following, are retained because the Act of the Legislature referring to the matter, prescribes that the contracts shall be awarded, &c., "in the manner now prescribed by *ordinance*." See pp. 138-139 of the Charter, and the Act of March 25, 1907, 24 D. L. p. 347.

vertise for bids in such other newspapers, journals or periodicals as it may by resolution direct.

Bids must describe methods.

SEC. 4. Each bid must be accompanied by a complete description of the method, scheme or system of disposition or utilization to be pursued, such description to be accompanied by complete plans and specifications, and such plans and specifications shall set forth the methods to be used, the results to be accomplished and the location of the disposal plant.

Discretion in Council.

SEC. 5. The Council (*a*) shall have the right to award the contract under that proposal, the acceptance of which will, in the judgment of The Council, best secure the efficient performance of the work; and shall also have the right to reject any and all bids.

(*a*) See note "a" to Sec. 1 of this ordinance.

Contractor may use city crematory.

SEC. 6. The Council shall have the right to permit the contractor to use the City Crematory and may authorize the same to be altered in such manner as shall be necessary to convert the same into a disposal plant.

Council may purchase disposal plant.

SEC. 7. Provisions may be made in the contract and specifications by which the Council will have authority to purchase the disposal plant at the termination of the contract.

Certificate of surety company must accompany bids.

SEC. 8. Each bid or estimate shall be signed by the bidder and shall be accompanied by a certificate of a surety company authorized by law to act as surety in the State of Delaware, signifying the consent of said surety company to act as surety for said bidder for the faithful performance of the contract. The qualifications of such surety company and the amount of bond required shall be determined by Council.

Definition of "garbage disposal."

SEC. 9. By "garbage disposal" it is intended to provide for all kitchen and table waste of an animal or vegetable nature, swill, offal, vegetables, fruits, meats, fish, bones, fat, carrion, market refuse, dead animals, such as cats and dogs, all putrescible matter both solid and liquid, animal and vegetable, which may result from the preparation of meat, fish, fowl and vegetables of any character, or which may be caused by the decay of foodstuffs, or by handling, storing or dealing in the

same, as clear of all ashes or rubbish as it is possible to keep the same.

SEC. 10. Each bidder shall present, separately with his bid, a certified check on a bank or trust company doing business in the City of Wilmington for the sum of five hundred dollars as a guarantee for the proper execution of the contract. Certified check to accompany bids.

SEC. 11. It shall be the duty of the Board of Health to enforce the provisions of this ordinance in the manner herein provided. Duty of Board of Health.

SEC. 12. The Council shall have power to make any other provisions in the contract not inconsistent with the charter and ordinances of the City of Wilmington.

Approved April 26, 1906.

AN ORDINANCE to amend an ordinance, entitled "An Ordinance in Relation to the City Crematory."[1]

Strike out all after the enacting clause in said ordinance and insert in lieu thereof the following: Amendment.

BE IT ORDAINED, by the Council of Wilmington.

SECTION 1. That when accepted by the Council, the Crematory near the intersection of West Liberty street and Madison street extended, shall be known as the City Crematory, and shall be under the management and supervision of the Council of the City of Wilmington. Under management of Council.

SEC. 2. The Council at its first stated meeting in the month of May, 1898, and biennially thereafter, shall elect a Superintendent of the Crematory and three assistants, one of whom shall act as watchman. The Superintendent shall have general supervision of the cremation and burning of the offal and garbage, he shall keep an accurate account of the weight of each load of garbage and the district from which it is gathered, and report the same to the Council and the Board of To elect superintendent and assistants. To keep account of weight of garbage. Report.

1. See Vol. 20, p. 677, Act May 6, 1897.

Health on the first stated meeting in each month, and he and his assistants shall perform such other duties as the Council may direct.

Salary.

SEC. 3. The Superintendent of the Crematory shall receive as his salary seven hundred and twenty dollars per annum; the three assistants shall receive six hundred dollars each, per annum. Said salaries to be paid in the same manner as other salaries are now paid.

SEC. 4. The said Superintendent and assistants shall be under and subject to such rules and regulations as the Council may hereafter adopt for the management of the City Crematory.

Unlawful to place waste on streets.

SEC. 5. After the passage of this ordinance it shall be unlawful to place upon any street, lane, alley or vacant lot within the city limits any waste from market houses, commission merchants, grocery stores, fruit stands or other places, but the same shall be removed to the City Crematory and there destroyed as the city garbage.

Committee to advertise for coal.

SEC. 6. As soon as the City Crematory shall have been accepted by the Council, and annually in the month of July thereafter, the Crematory Committee of Council shall advertise in two newspapers for proposals to furnish coal in such quantities as may be required, and the said Council shall award the contract in the name of the Mayor and Council of Wilmington to the lowest and best bidder.

To dispose of ashes.

SEC. 7. The Council shall dispose of the ashes to the best advantage, and any money arising from such sale shall be deposited with the City Treasurer.

Penalty.

SEC. 8. All persons offending against the provisions of this ordinance, shall, upon conviction before the Municipal Court, forfeit a fine of not less than five dollars nor more than twenty-five dollars to be paid in the city treasury the same as other fines are now paid.

SEC. 9. All ordinances or parts of ordinances conflicting with this ordinance be and are hereby repealed.[1]

Passed at the City Hall, June 24, 1897.

AN ORDINANCE concerning the burial of dead persons within the City of Wilmington.

SECTION 1. If any person or persons shall hereafter bury or cause to be buried, any person within the limits of this city of and under six years of age, at a less depth than four feet, over six and not exceeding twelve years, at a less depth than five feet, and over twelve years at a less depth than six feet, he, she or they so offending shall be guilty of a common nuisance, and upon conviction thereof before the [Municipal Court] shall each forfeit and pay a fine of not less than two dollars and not exceeding ten dollars, and shall suffer imprisonment until the fine and costs are paid. Depth of graves within city limits.

Passed at City Hall, February 17, 1845.

AN ORDINANCE to provide for the inspection of meats.

SECTION 1. It shall be unlawful to sell, expose or offer for sale in the City of Wilmington for food any cattle, sheep, swine or other animal, fish or fowl, or the flesh thereof, which by reason of any injury, defect, disease, taint, adulteration or other cause is unfit or unwholesome for food or dangerous to the public health, and the exposure of the same at any market place, store, stall or place where articles for food are sold, shall be *prima facie* evidence of the violation of the provisions of this ordinance. Veal less than four weeks old when killed shall be deemed unwholesome, and the sale or offering for sale of the same shall be unlawful. Sale of unsound meat, etc., unlawful. Veal.

SEC. 2. No person shall sell or offer for sale any unwholesome meat or the flesh of any dead animal which was sick, or Unwholesome meat.

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1. See ordinance approved April 26, 1906, entitled "An ordinance to provide for the Sanitary Disposal of Garbage." p. 801 this volume.

which died a natural death, or was killed by accident; nor shall any person sell, expose or offer for sale any putrid, blown or unsound meat.

Unlawful to bring in or sell diseased meat.

SEC. 3. No person shall bring into this city, or sell, or offer for sale, any cattle, sheep, hog or lamb, nor any meat, fish, game or poultry that is diseased, unsound, unwholesome, or that for any reason is adjudged to be unfit for human food.

Evidence.

The fact of any cattle, sheep, hog or lamb being in any stock yard for slaughter shall be sufficient evidence that the same is being exposed there for sale; and the fact that the carcass of any cattle, hog, sheep or lamb, or any part thereof, is found in any slaughter house or any public or private market place, dressed and prepared as such meats usually are for market, shall be deemed sufficient evidence that the same is on sale; and no animal, or any part thereof, or any fish, game or poultry that has been examined and condemned by the inspector shall be held, sold or offered for sale for human food in any market or place in this city, and the same when condemned shall be sprinkled with coal oil by the inspector.

Condemned meat.

Pregnant animals.

SEC. 4. No person shall kill any cow, sheep or hog that is pregnant; nor shall any animal be slaughtered while it is in an overheated or feverish condition; and the meat of any such animal shall not be held, sold or offered for sale for human food in any market or elsewhere in this city.

Violators how punished.

SEC. 5. If any person shall violate any of the provisions of the preceding sections of this ordinance, upon conviction thereof before the Municipal Court for the City of Wilmington he shall forfeit and pay a fine of not less than twenty dollars nor more than one hundred dollars for every such offence; and such property so unlawfully sold, or exposed for sale, shall be forfeited to the City of Wilmington, and shall be seized, buried, destroyed or otherwise disposed of by the Inspector of Meats, the expense thereof to be made a part of the costs, and paid by the persons so offending in addition to any fine that may be imposed by said Court.

Fine.

Disposal of condemned meat.

Inspector of Meats to enforce ordinance.

SEC. 6. It shall be the duty of the Inspector of Meats to strictly enforce all the provisions of this ordinance; to make complaint against all offenders before the Judge of the Municipal Court; to seize all meats or other articles sold, exposed or offered for sale contrary to this ordinance, and to dispose of the same in accordance with the provisions of this ordinance.

Inspection of animals.

SEC. 7. He shall from time to time, and as often as may be necessary, inspect and examine any animal, carcass, meat, poultry, game, flesh or fowl exposed for sale or deposited for the purposes of sale in the City of Wilmington to the end that he may be advised whether any such articles are diseased, or unsound, or unwholesome, or unfit for the food of man; and if he finds that any such animal or article is diseased, unsound, or unwholesome, or unfit for the food of man, he shall take such proceedings as are requisite and necessary for causing the same to be seized, taken and carried away in order to be dealt with according to the laws and ordinances applicable to the same.

Supervision by Board of Health.

SEC. 8. In matters not specifically provided for in these ordinances he shall observe and execute the instructions of the Board of Health, and the rules and regulations of the said Board of Health which from time to time shall be made applicable to his office. He shall make monthly reports of his transactions in writing to the Secretary of the Board of Health. He shall make an annual report to the Board of Health on the first Tuesday in January of each year, together with such suggestions and recommendations as he may deem proper.

Reports.

Police to aid Inspector.

SEC. 9. It shall be the duty of the police, under the direction of the Chief of Police, to aid the Inspector of Meats in the enforcement of this ordinance. It shall be the duty of the Inspector of Meats to enter in and upon the premises of all persons, and into any and all markets and places where meat, fish or fowl are exposed or sold for food, and into any and all slaughter houses where any cattle, sheep, swine or other animals are butchered, killed, dressed and prepared for sale or

Inspection of markets and slaughter houses.

market, and make examination and inspection of such articles.

Resisting inspector.

And any person who shall impede, interrupt or resist that officer in the performance of his duties shall upon conviction thereof before the Judge of the Municipal Court be adjudged to pay a fine of not less than ten dollars and not exceeding thirty dollars.

SEC. 10. All ordinances and parts of ordinances inconsistent with this ordinance, particularly the ordinance entitled "An ordinance for the inspection of meats," passed April 6th, 1876, and the thirteenth section of an ordinance entitled "An ordinance establishing and regulating the public markets of the City of Wilmington," passed January 5th, 1883, are hereby repealed.

Passed at City Hall, June 22, 1893.

AN ORDINANCE to prevent the sale of premature or diseased fruit in the City of Wilmington.

Unlawful to sell premature or diseased fruit.

SECTION 1. That it shall be unlawful for any person or persons to sell, offer or expose for sale, in any market, store or street in the City of Wilmington any premature or diseased fruit.

Penalty for violations.

SEC. 2. That any person or persons so offending shall upon conviction thereof in the Municipal Court of the City of Wilmington be fined not less than ten dollars or more than twenty dollars, and all such premature or diseased fruit shall be confiscated and destroyed.

Enforcement

SEC. 3. That it shall be the duty of the Clerk of the Market and the Executive Officers of the Board of Health to strictly enforce this ordinance.

Passed at City Hall, August 31, 1893.

AN ORDINANCE to provide against the adulteration of Milk and Cream, and to provide for the inspection thereof.

BE IT ORDAINED, by the Council of Wilmington.

SECTION 1. That the Council shall on the first stated meeting in May, A. D. 1895, and on the first stated meeting in May biennially thereafter, elect a Milk Inspector, whose duty it shall be to inspect the milk and cream offered for sale in the City of Wilmington, and to perform such duties in connection with said office as may be provided by rules of the Health Department of the city relating to the sale of milk, and the Board of Health is hereby empowered to adopt such rules as the health of the city may require. Election of Milk Inspector. Duties.

SEC. 2. Said Inspector shall record in books kept for the purpose, in the office of the Health Department, the names and places of business or residence of all persons engaged in the sale of milk or cream. Record books.

SEC. 3. Whosoever, by himself, or by his servant, or agent, or as the servant or agent of any person or persons, sells, exchanges or delivers, or has in his custody or possession wth the intent to sell or exchange, or exposes or offers for sale or exchange, milk without first registering with the Clerk of City Council his, her or their name or names together with the location of his, her or their route or place of business and the name of the owner or owners of and the location of the dairy from which he, she or they obtain such milk, or without obtaining from the said Clerk of Council, a permit to carry on such business, which said permit shall be issued without charge; (a) or without displaying such permit in every store or wagon from which said milk is sold, shall, upon conviction before the Municipal Court, forfeit and pay a sum not less than ten ($10) dollars nor more than fifty ($50) dollars. The above mentioned permit shall be obtained within sixty days from the passage of this ordinance from the Clerk of Council, and yearly thereafter during the month of January. No permit as above set forth, shall be granted unless the application therefor is accompanied by a statement of a licensed veterinarian certifying to the healthy condition of the cows,especially Registration. Permit from Clerk of Council. Penalty. Permits shall be yearly. Certificate of veterinarian.

with reference to tuberculosis, (the tuberculine test not being required) and to the sanitary condition of the barns of each applicant. Any person who obtained a permit for the sale of milk through fraud or misrepresentation of any kind; and any person who furnishes or sells milk from diseased cows which he has purchased or obtained after inspection thereof by a licensed veterinarian, as mentioned in this ordinance; and any person who furnishes or sells milk from diseased cows the disease having developed after inspection thereof by the said licensed veterinarian, shall, upon a hearing and conviction thereof before the Judge of the Municipal Court, forfeit said permit.

Penalty.

(*a*) This section states that a permit to carry on the business "shall be issued without charge."

In 1895 an ordinance was passed requiring persons engaged in the sale of milk to pay a yearly license of $10, provided that persons selling less than 20 quarts a day should not have to pay any license. The Court held the ordinance void.

Lore, C. J.: "The exception relied upon is that there was no authority vested by the Charter of Wilmington, in the City Council to impose or require a license from persons engaged in the sale of milk. (269) * * Then, there is this further objection. Here is a general ordinance for an entire class of people, which licenses those of them who sell more than twenty quarts and exempts them who sell less than twenty quarts. Section 31 of the municipal Charter says: "The Council shall not have power to pass any ordinance exempting any person from the operation of any ordinance or municipal regulation." They cannot discriminate," &c.

Gray vs. Wilmington, 2 Marv. 257 at 269 and 270. (yr. 1896)

Sale of adulterated milk prohibited.

SEC. 4. Whosoever, by himself, or by his servant, or agent, or as the servant or agent of any person or persons, sells, exchanges or delivers, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale or exchange adulterated milk or cream, or milk or cream to which water or any foreign substance has been added, or milk or cream from diseased or sick cows, or milk drawn from animals within fifteen days before and five days after calving, or milk kept for sale or stored in any room used for sleeping or domestic purposes, or kept in boxes or refrigerators used for storing other food provisions, or milk the temperature of which, exceeds seventy (70) degrees Fahrenheit, shall upon conviction before the Municipal Court forfeit and pay a sum not less than ten (10) dollars nor more than fifty (50) dollars, if it shall be the first offence, and if arrested and convicted before

said Court for a subsequent offence, a sum of not less than twenty-five (25) dollars nor more than one hundred (100) dollars.

Milk from which cream has been separated not pure.

SEC. 5. Whosoever, by himself, or by his servant or agent, or as the servant or agent of any person or persons, sells, exchanges or delivers, or has in his custody or possession with intent to sell or exchange, or expose or offer for sale as pure milk, any milk from which the cream or any part thereof has been removed, shall be subject to the penalties provided in the preceding section.

Vessels containing skim milk must be so marked.

SEC. 6. No milk dealer or other person or persons, shall sell, deliver, offer for sale or expose for sale, any skimmed milk, unless the vessel, can or package containing the same shall be plainly and distinctly marked designating the same, in uncondensed Gothic letters not less than one inch in length. For a violation of this section, upon conviction before the Municipal Court, a fine of ten (10) dollars shall be imposed.

Prosecutions.

SEC. 7. In all prosecutions under the three preceding sections, if the milk is shown upon analysis to contain more than eighty-eight per cent. of watery fluid, or to contain less than twelve per cent. solids, not less than one-fourth of which must be fat, or if the cream is shown upon analysis to contain less than fifteen per cent. of butter fat, such milk or cream shall be deemed, for the purpose of such prosecution to be adulterated and not of good standard quality.

Milk in unclean container.

SEC. 8. Whosoever, by himself, or by his servant, or agent, or as the servant or agent of any person sells, exchanges or delivers, or has in his custody or possession with intent to sell or exchange or offer for sale any unclean, impure, unwholesome or colored milk or milk placed in containers which are dirty or who shall keep cows for the production of milk in a crowded or unhealthy condition or in a building or shed which shall have less than 350 cubic feet of air space for each cow, and stalls less than three feet in width, or which shall not be well lighted, ventilated, drained and provided with good and sufficient facilities for feeding the animals in cleanly

Cows kept in unhealthy quarters.

manner, or feed the same on food that produces impure, diseased or unwholesome milk, or shall feed cows on distillery waste, or upon garbage or swill, or upon any substance of any unwholesome nature, shall be liable to the penalties provided in Section 4 of this ordinance.

Milk wagons must have name of owner thereon.

SEC. 9. Every person offering milk for sale from a wagon shall have painted on both sides of said wagon, in a conspicuous place, the name in full of the owner therefor. For a violation of this section, upon conviction before the Municipal Court, a fine of ten (10) dollars shall be imposed.

Authority of Milk Inspector.

SEC. 10. The Milk Inspector shall have the authority to enter any place where milk is sold or kept for sale, or to stop and enter any wagon from which milk is sold, for the purpose of inspecting the milk, as provided in this ordinance. He shall prosecute before the Municipal Court all offenders against this ordinance, and any person who shall impede, interrupt or resist the Milk Inspector in the performance of his duties, as prescribed by this ordinance shall, upon conviction thereof in the Municipal Court, be adjudged to pay a fine of not less than ten (10) dollars and not exceeding twenty-five (25) dollars. Said Inspector shall report in writing to the City Council once a month, giving a detailed statement of his work.

Penalty.

Fines.

SEC. 11. All fines provided by this ordinance shall be for the use of the city, and shall be deposited with the City Treasurer the same as other fines and fees are now paid.

Salary.

SEC. 12. The salary of the Milk Inspector shall be one thousand dollars (1000) per annum, payable monthly, in the same manner as other officers of said city are paid.

Ordinance, June 24, 1905. Allowance for horse and carriage.

[The said Milk Inspector shall receive annually the sum of three hundred dollars for the care and maintenance of a horse and carriage, the same to be paid in equal monthly portions of twenty-five dollars ($25.00) on the first day of each month. The first payment to be made upon the first day of August, 1905.]

The Inspector himself, at his own expense, shall provide the implements for inspecting the milk.

SEC. 13. All ordinances, or parts of ordinances, or amendments hereto, inconsistent herewith, are hereby repealed.

Approved November 16, 1904.

CHAPTER IX.

ORDINANCES RELATING TO PUBLIC MARKETS

	Page		Page
1. Regulation of Weights and Measures	814	4. Front and Church Street Market	831
2. Establishment and Regulation of Markets	817	5. Limits of King and Madison Streets Markets	832
3. Spaces in Farmers Curb Market	830	6. Establishing a Fruit, Grain and Vegetable Market on Fourth Street	833

1. Regulation of Weights and Measures.

AN ORDINANCE to regulate the weights and measures used in the public markets and market houses of the City of Wilmington.

Regulator of Weights and Measures created.

SECTION 1. That hereafter there shall be a Regulator of Weights and Measures used in the public markets within this city, and the standard adopted by the State of Delaware shall be the test by which they shall be computed and determined.[1]

Standards of weights.

SEC. 2. The City Council shall, at the expense of the city procure correct and approved standards, with their necessary sub-divisions, together with the proper beams and scales, for the purpose of testing and proving the weights and measures of said standard used in the public markets and market houses within this city, and the same shall be kept in the custody of the Clerk of the Market of this city during his term of office, and shall be used for no other purpose than the testing of weights and measures provided by this ordinance.

By whom kept.

Weights to be tested annually.

SEC. 3. It shall be the duty of the Clerk of the Market, at least once in every year, and as often thereafter as he may deem necessary, to examine and test the accuracy of all

1. The State chemist is the custodian of the standard weights and measures, &c. See 25 D. L. p. 116.

weights and measures, scales , or other instruments or things used by any person for weighing or measuring any article for sale by weight or measure in the public markets and market houses within this city, and stamp the same with a suitable seal or stamp, to be provided by the city, all weights, measures, scales, beams or other apparatus so used for measuring or weighing, which he may find to be correct; to condemn all weights, measures, scales, beams, or other apparatus for measuring or weighing which he may find incorrect upon such inspection, and to cause the owner thereof to have them corrected and made conformable to the said standard in the manner hereinafter provided. Any person refusing to exhibit any weights, measures, scales, beams or apparatus for weighing or measuring in the public markets or market houses aforesaid, to the Clerk of the Market for the purpose of his examination or inspection as aforesaid, or in any manner obstructing him in the performance of his duty under this ordinance, shall forfeit and pay a fine of not less than five dollars nor more than ten dollars.

Weights to be stamped.

Illegal weights to be condemned.

Penalty for refusing to exhibit weights.

[The Clerk of the Market shall take possession of and confiscate all measures which he may find upon inspection to be incorrect and unlawful under the provisions of this ordinance.]

Ordinance, June 14, 1894. Clerk of Market shall confiscate all incorrect measures.

SEC. 4. It shall be the duty of the Clerk of the Market to examine, put in good order, and seal or stamp all weights, measures, beams, scales and other implements and apparatus used for weighing and measuring within the public markets and market houses within this city, at the several places where the same are used, but if they be found not conformable to the standard of this State, they shall be repaired and properly adjusted within ten days after they have been tested and condemned; and such weights, measures, beams, scales, implements or other apparatus, shall not be used for weighing or measuring until such adjustment to the proper standard, provided by this ordinance, shall have been made; and any person offending against the provisions of this section, upon conviction thereof, shall forfeit and pay a fine of not less than five dollars nor more than ten dollars.

Duty of Clerk of Market.

Scales condemned not to be used.

Penalty.

Articles of dry measurement shall not be sold from liquid measures.

Penalty.

SEC. 5. It shall be unlawful for any person to sell any article of dry measure in flaring wine or liquid measures, whether of pint, quart, half-gallon, or gallon, in the public markets or market houses of this city. And any person who shall violate this provision shall, upon conviction thereof, forfeit and pay a fine of not less than five dollars nor more than ten dollars. And it shall be the duty of the Clerk of the Market to make complaint to the [Municipal Court] of this city, of every violation of this section that comes within his notice.

The Clerk of the Market shall be Regulator of Weights and Measures.

Fees.

SEC. 6. The Clerk of the Market shall be the Regulator of Weights and Measures, provided for by this ordinance, and he shall be allowed to receive the following fees for services rendered by him under this ordinance, viz: For inspecting and sealing or stamping beams, platform scales and steelyards, the sum of ten cents each; counter and spring scales, ten cents each; for comparing and sealing or stamping bushel measures, fifteen cents each; half-bushel measures, fifteen cents each; less denominations, each five cents. For comparing and sealing flaring wine or liquid measures, each the sum of five cents; for regulating and stamping weights used on scales for weighing articles sold by the pound or less quantity, for each weight adjusted, regulated and stamped, the sum of five cents. It shall not be lawful, however, for the Clerk of the Market to charge the above fees more than once within the period of one year, unless, upon inspection, the said instruments and weights for weighing or measuring be found not conformable to the standard of this State.

Fees only to be charged one time in each year.

The person elected as Clerk of the Market shall be Regulator of Weights and Measures.

SEC. 7. The Regulator of Weights and Measures used in the public markets and market houses of the City of Wilmington, provided for in this ordinance, shall be appointed by the Council within two weeks after the passage of this ordinance, and shall hold his office until the present term of the Clerk of the Market shall expire. At all elections, hereafter, for Clerk of the Market for this city, the person elected for the position of Clerk of the Market, shall also be the Regulator of Weights and Measures, provided for in this ordinance, during the term of said Clerk of the Market is elected by the Council for to serve in said office of the Clerk of the Market.

Fees for stamping weights and measures.

SEC. 8. The fees paid to the Regulator of Weights and Measures used in the public markets and market houses of this city, for regulating, sealing or stamping of beams, scales, steelyards, measures and weights used in weighing articles sold by the pound, or by less quantity, shall be paid by persons whose beams, scales, steelyards, measures or weights are adjusted and sealed or stamped by the Regulator of the Weights and Measures aforesaid. Under the provisions of this ordinance said fees to be held by the said Regulator of the Weights and Measures used in the public markets or market houses of the City of Wilmington, as compensation for his services in adjusting, regulating, stamping or sealing such scales, beams, steelyards, measures or weights as he may adjust, regulate, seal or stamp, under the provisions of this ordinance.

The Regulator shall retain the fees for his services.

SEC. 9. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

Passed at City Hall, August 10, 1882.

AN ORDINANCE establishing and regulating the public markets of the City of Wilmington.[1]

Markets, where located.

SECTION 1. From and after the first day of April, A. D. one thousand eight hundred and eighty-three, the public markets (*a*) of the City of Wilmington shall be located and established on King street, Madison street and Fourth street. The market on King street and the market on Madison street shall be used exclusively by farmers and truckers to sell fruits, vegetables, fowls and meats raised upon the lands of which they are the owners or renters, or farmed on the shares. The King street market for farmers and truckers shall commence on the northerly side of Second street and extend northwardly

King street market, by whom used.

Extent.

1. This ordinance must be taken subject to the provisions of an Act of the General Assembly entitled "A Supplement to 'An Act to Revise and Consolidate the Statutes relating to the City of Wilmington, passed at Dover, April 13, 1883,'" (with amendments thereto), which said Act relates exclusively to public curbstone markets within the City of Wilmington, and will be found among the Acts of General Assembly, p. 149 of this volume.

Resolution, Street and Sewer Department, March 2, 1899, Sec. 1. Ordinance, April 20, 1907. Madison street market. Extent. Wednesdays and Saturdays, when on easterly side of streets. When on westerly side of streets. Tuesdays and Fridays, when on easterly side of streets. When on westerly side of streets.

to the southerly side of [Tenth][1] street. [The Madison street market shall commence at the northerly side of Second street and extend northerly to the southerly side of Ninth street.][2] From the first day of May till the first day of November the curbstone markets on said streets, on Wednesdays and Saturdays of each week, shall be held on the easterly side of said streets; from the first day of November till the first day of May the curbstone markets on said streets, on Wednesdays and Saturdays of each week shall be held on the westerly side of said streets; from the first day of May till the first day of November the curbstone markets on said streets, on Tuesdays and Fridays of each week, shall be held on the easterly side of said streets; and from the first of November till the first day of May the curbstone markets on said streets, on Tuesdays and Fridays of each week, shall be held on the westerly side of said streets. At the public markets on King street and Madison street, within the limits above mentioned, farmers and truckers will be permitted to back up their vehicles to the curbstones thereon, on Tuesdays and Fridays at 12 o'clock (noon), and commence the sales of the products of the lands which they own or lease on the sidewalks of said streets; and when the curbstone markets on said streets are held on one side of said streets in afternoon and a different side of said streets on the following day, the farmers and truckers attending such markets shall have the right to remove their wagons over to the opposite side of the street to secure their stands on Tuesday and Friday afternoons at 4 o'clock (P. M.) and no earlier, where they will be allowed to remain backed up to the curbstone on Wednesdays and Saturdays until two o'clock P. M., and no longer. In each of the squares on King street and on Madison street, where the farmers and truckers are by this ordinance allowed to be backed up to the curbstones for the purpose of selling produce therefrom, there shall be two spaces of three feet each in width kept open between the hubs of the wheels of the vehicles backed up to the curbstones, to allow persons free ingress and egress to and from the sidewalks to

Time of market.

Rule as to moving.

Rule as to space.

1. See ordinance of April 30, 1885, as amended, pp. 832-3 of this volume.

2. See p. 832 of this volume.

the streets at all times. No person backing up a vehicle for the purpose of selling their produce on the sidewalks of said King street and said Madison street, shall be allowed to use more than [eight] feet of space on the sidewalk in length opposite his vehicle to display produce thereon or to sell the same therefrom; and no person who backs up his or her vehicle for market purposes on said streets shall occupy more than three feet in depth on the sidewalks of said streets, from the outer curb line of the same, with their benches or baskets to display their produce thereon or sell the same therefrom. No vehicle will be allowed to back up to the curbstones on either of said streets for market purposes or otherwise, outside of the building line of any of the streets intersecting King street or Madison street. Any person violating any of the provisions of this section shall upon conviction forfeit and pay a fine of five dollars.

Act of April 5, 1885.
Space to be used.
Penalty.

(*a*) The "market" extends from the curb to the building line. The farmer can come out but three feet from the curb, but the buyer can use the entire sidewalk.

Paynter, J.: "The latter" (farmers) "could only occupy three feet, while the purchasers could use any part of the sidewalk, making the space between the curbstone and the building line the entire market for both sellers and purchasers."

State vs. Wood (yr. 1888), unreported.

SEC. 2. It shall be lawful for any farmer or trucker to sell from his vehicle on the sidewalks of King street and Madison street, on the public market days within the market hours prescribed by this ordinance, slaughtered cattle, hogs, sheep and calves which were raised and fed on the lands owned or rented by such sellers thereof, (*a*) either by the whole quantity or in cut pieces, which shall include lard, sausage and scrapple manufactured by such seller on his own or rented lands from animals raised and fed thereon and none others. * * * * *providing*, the same is in a good and wholesome condition for public use.

What may be sold.
See Act of March 10, 1887, 18 D. L. 340.
See Acts of April 13, 1883, and April 15, 1885.
Proviso.

(*a*) See Sec. 5, "a," p. 152 of this volume.

* * * * * * * * * *

See Acts of April 13, 1883, and April 15, 1885.

SEC. 3. All of that portion of Fourth street on the northerly side thereof, commencing at the northeast corner of King

New Jersey Market.

street and extending east to Walnut street, shall be known as the "New Jersey Market," and shall be used exclusively for the sale of products brought from the State of New Jersey, by the producers of such products only, that is to say, any producer of fruits or vegetables residing in the State of New Jersey, shall have the right to sell the products of his own or leased lands at the places above designated, on Tuesdays, Wednesdays, Fridays and Saturdays of each week, and they shall have the privilege on Tuesdays and Fridays to place their products for display and sale at the places above designated at [6] o'clock A. M., and to keep the same exposed thereon for sale from Tuesday at [6] o'clock A. M. until the next Wednesday at 3 o'clock P. M., and on Fridays at [6] o'clock A. M. until the next Saturday at 3 o'clock P. M., *provided, however,* that in the berry, cantaloupe and watermelon season such producers may stand and sell in said market every day (Sundays excepted) from 6 o'clock A. M. until 9 o'clock P. M. Each of said producers will be allowed to use a space of ten feet in length on the curb line, and extend on the sidewalk a distance of not more than three feet from the curb line, and to extend out into Fourth street at a distance of eight feet, and no more. [Each and every person or persons who shall avail themselves of the privilege of standing in the "New Jersey Market" shall pay to the Clerk of the Market, for the use of the city, the sum of twenty-five cents per space, for each and every day that they sell or display goods for sale in said market.] No stand or space outside of the building line of the streets intersecting Fourth street, shall be used for the purpose of displaying or selling produce therefrom, and every person violating any of the provisions of this section shall upon conviction thereof, forfeit and pay for each offence a fine of five dollars.

Who to use.

Market days.

Hours. Aug. 2, 1883.

Aug. 2, 1883.

Proviso.

Space allowed.

Resolution, Street and Sewer Department, March 2, 1899.

New Jersey Market.

Penalty.

Hucksters' market.

Location.

SEC. 4. All that portion of the southerly side of Fourth street, between the building line of the southeast corner of Fourth and King streets to Walnut street, and all that portion of the southerly side of Fourth street, from Jefferson street to Monroe street, shall be set apart, exclusively, for a hucksters' market, and all that portion of the northerly side of Fourth street, between Jefferson and Monroe streets, shall be set apart

for a fruit and grain market.[1] Any person residing in this city who has taken out a retailer's license for selling goods, wares and merchandise from the Clerk of the Peace for New Castle County, for the purpose of huckstering, exclusively, and none others, shall be permitted to stand in the hucksters' market, for the purpose of selling vegetables and all kinds of domestic fruits daily (except on Sundays), but in no case shall any such huckster be allowed to let any of their produce remain in said hucksters' market for sale, or for display, on any Saturday after 10 o'clock P. M. Each of said hucksters shall be allowed to use a space ten feet in length, on the curb line, and no more; and of a depth, on the sidewalk at the curb, of three feet, and no more from the outer side of the curb line, and he or she shall also be permitted to place his or her baskets of vegetables and domestic fruits, or piles of melons out on Fourth street for display and for sale, for the space of eight feet from the curb line, and no further. Each and every huckster who shall avail himself of the privilege of standing in the hucksters' market shall pay to the Clerk of the Market, for the use of the city, the sum of twenty-five cents for each and every day that they sell or display goods for sale in said hucksters' market. Any person violating any of the provisions of this section shall, upon conviction thereof, for every offence, forfeit and pay a fine of five dollars.

Fruit and grain market.

Who may use hucksters' market.

Space.

Fees to be paid.

Penalty.

SEC. 5.[2] All that portion of Fourth street, between the building line on the westerly side of King street, and the building line on the easterly side of Market street, and all that portion of Fourth street, from the westerly building line of Market street to the easterly building line of Orange street, shall be known as the fruit and grain market, and shall be set apart for the sale of domestic fruits and grain, exclusively. In this market, peaches, apples, pears, berries of all kinds, and all other domestic fruits and grain of all kinds, may be sold either

Location of fruit and grain market.

What may be sold.

1. See Sec. 5, p. 821 of this volume, and also p. 833 of this volume. (Ordinance of Dec. 20, 1900.)

2. See 17 D. L. c. 600, Sec. 1, p. 893, published on p. 149. The ordinance of Dec. 20, 1900, p. 833 of this volume practically repeals the above section. See also Sec. 4 of this ordinance as to fruit and gain market, p. 820 of this volume.

in bulk or in small quantities, from wagons or otherwise, by the producer of such fruits or grains, or by his or her legally authorized agent or agents. No one person attending this market, either with or without a wagon, shall be allowed to use more than ten feet in length at the curb line, to display or sell such fruits or grains, or place the same out on the sidewalk for display or sale to a greater depth than three feet from the outside of the curb line, or to a greater distance out on Fourth street than eight feet (a) from the curb line, either baskets or wagons; and all shafts and tongues must be removed from all wagons that stand in the spaces allotted for fruit and grain markets on Fourth street. During the peach season, traders and dealers in peaches only, who buy their peaches, and expose them thereafter for sale, shall be permitted to stand in the market set apart for a fruit and grain market, for the purpose of selling their peaches. * * * * * * During the peach season, only, the persons attending said market shall be allowed to sell their peaches daily in said market (Sunday excepted), from sunrise in the morning until 10 o'clock on Saturday evening, at which hour all wagons, baskets, crates, etc., must be removed from the spaces allotted for a fruit and grain market. At all seasons of the year, except during the peach season, the market hours in the market for fruits and grains on Fourth street shall be the same hours as those named in this ordinance for the farmers' and truckers' markets on King and Madison streets.

Space.

Sale of peaches.

Fee.

Resolution of Street and Sewer Department, March 2, 1899.

Hours during peach season.

(a) Persons using the street under the above ordinance may erect awnings in the street to protect their fruit from the sun and rain, but the city must not be negligent in permitting poorly constructed, or unsafe awnings to be used, or it will be liable in damages to one injured by reason thereof.

Lore, C. J.: "At the time of the accident, under an ordinance of this city it was lawful for the northerly side of Fourth street, between King and Market streets, for a space of eight feet from the curb line, to be used for the sale of peaches in peach season, and for the sale of domestic fruits of all kinds by one who was either a producer or his agent. * *

On the other hand" * * if "the awning, either in its material or in its construction or maintenance was of such a character as to be a menace, and dangerous in itself to persons using such public highway" and it was "suffered to remain on the street for an unreasonable time after notice or knowledge thereof had come to the defendant, either express or implied," and injury resulted to one by reason thereof, the city would be liable.

Jarrell vs. Wilmington, 4 Penn. 454 at 456. (yr. 1903)

[Each and every person or persons who shall avail themselves of the privilege of standing in the market shall pay to the Clerk of the Market, for the use of the city, the sum of twenty-five cents per space for each and every day that they sell or display goods for sale in said market.] Any person violating any of the provisions of this section shall, upon conviction thereof, forfeit and pay a fine of five dollars.

Charge for market space. Resolution, Street and Sewer Department, March 2, 1899.

Penalty.

SEC. 6. All that portion of King street from the northerly building line of Front street to the southerly building line of Second street, and all that portion of Madison street from the northerly building line on Front street to the southerly building line on Second street, shall be set apart as a fish market, exclusively, where all dealers in fresh fish may sell the same, either from wagons, tables or benches, daily. All tables, benches or boxes used for the purpose of displaying fish for sale must be placed in the street outside of the curb line, and no vender of fish in the fish market will be allowed to stand upon the sidewalk whilst engaged in selling the same. All benches, tables and boxes used for displaying fish from, or selling fish thereat must be removed from the streets, where such fish is allowed by this ordinance to be sold, [by 2 o'clock P. M. on Monday and Thursday, 3 o'clock P. M. on Wednesday, and 9 o'clock P. M. on Tuesday, Friday and Saturday from the 15th day of March to the 15th day of June in the same year and from and after the said 15th day of June until the 15th day day of March, next ensuing, the hours for market in the fish market shall terminate at 2 o'clock P. M.] at which time all benches, tables and boxes must be removed from said market, and be kept therefrom on Sunday. No person selling fish on the public streets set apart for fish markets will be allowed to throw offal or filth from fish into any of the gutters or upon any of the public streets of this city. Any person offending against any of the provisions of this section, shall upon conviction thereof, forfeit and pay a fine of five dollars.

Location.

Tables, etc., where placed.

Hour of removal.

Resolution, Street and Sewer Department, April 25, 1899.

Fish market.

All boxes and benches must be removed from fish market by 2 o'clock P. M.

Offal.

Penalty $5.

SEC. 7. (a) No person or persons shall erect, or have any booth, tent, stand, stall or place, in or upon any of the footways, sidewalks, streets, lanes or alleys of this city, for exposing or offering for sale any goods, wares or merchandise what-

Booths, stands, tents and stalls forbidden.

Proviso.

Exception as to certain persons.

soever. *Provided, however*, that any owner or renter (*b*) of any building for a store, commission house or other legitimate place of business, shall have the right to expose to view and sell any of his or her commodities kept inside of such place of business for sale, within the space of four feet from the building line of the building he or she is engaged in carrying on his or her business therein. Any person being a licensed dealer, renting a cellar only, in any building, for the purpose of selling goods, wares and merchandise therein, shall have the right to stand inside of said cellar doorway and sell his or her goods therefrom; providing, that not more than four feet of space out from the building in which such cellar is located, and no greater space in front of said cellar doors opened out on the sidewalk, shall be allowed by such dealer to display or sell his or her goods therefrom. The renting of a cellar shall not give him any right to display or sell his goods on any other portion of the sidewalk, even though the owner or occupier of the first story of said building above the ground floor of such building should give his consent for such use of sidewalk to the renter of the cellar. [*Provided, however,* that any owner or renter of any store or dwelling, which he or she occupies on King or Madison streets, within the limits therein prescribed for public markets, may suffer, allow and permit any producer of fruit, vegetables or other commodities, raised or produced on his or her own lands, or on leased lands, which he or she may occupy, and none other, to stand on the sidewalk, up against the building line or such dwelling or store, as he or she may occupy as a residence or store above the cellar thereof, and sell such products therefrom, *provided,* that not more than four feet out from such building line is used for such purpose.] Any person violating any of the provisions of this section, upon conviction thereof, shall forfeit and pay a fine of five dollars.

Further proviso as to licensed dealers.

Aug. 2, 1883.

Owners of stores or dwellings may permit producers to sell.

Penalty.

(*a*) See Sec. 1, paragraph ; Sec. 2, and Sec. 12, pp. 743 and 826 respectively, of this volume.

(*b*) Note the difference in phraseology in the sections above referred to—Sec. 7, note "a."

Fruits, etc., not to be thrown in street.

SEC. 8. All persons selling fruits, vegetables or any other products whatever, in any of the public markets provided for by this ordinance, are prohibited from throwing into, or plac-

ing upon any of the sidewalks, gutters or public streets or alleys of this city, any decayed fruits or vegetables, or the husks, tops, roots or other refuse matter from corn, roots or vegetables, or any other refuse animal or vegetable matter whatsoever. All of such refuse matter shall be placed by the farmer, trucker, huckster or other dealer who brought the same into market, into a barrel or box, which such dealer shall provide at all times for such purpose, and all such refuse matter shall, by such seller as produced it, be conveyed and deposited outside of the city limits. Any person violating any of the provisions of this section shall upon conviction thereof, forfeit and pay a fine of five dollars.

Penalty.

Provisions as to weights and measures.

Duty of Clerk of Market.

SEC. 9. If any person shall bring into any of the public markets of this city for sale, any butter, lard, sausage or other provision in lumps or parcels, as for a greater weight or measure than the true weight and measure thereof proves to be, when tested by the Clerk of the Market by the legal standard of weights, or the legal standard of measures provided by the city for that purpose, or shall bring into any of the markets of this city for sale any salted or potted butter, or tub butter made up into printed lumps of a certain weight or measure, if it be fresh butter, sausage or lard, short of the weight it is offered to be sold for, the Clerk of the Market shall with a knife cut every such lump into four pieces and leave the same with the person who had it for sale. But if any other provision is found by the Clerk of the Market to be of lesser weight than that which it is offered to be sold for, or if any salted, potted or tub butter is printed and offered for sale as fresh butter, it shall be forfeited; and the Clerk of the Market shall immediately seize it and sell the same for the best price he can obtain therefor, and pay over the proceeds of such sale or sales to the City Treasurer for the use of the city.

Sale of oleomargarine for butter.

Penalty.

SEC. 10. If any person shall sell or offer for sale any oleomargarine, sueine or any other preparation bearing a semblance to butter, under the name of butter, thereby deceiving the purchaser thereof, or with intent to deceive the purchaser thereof, the person so offending shall for every such offence forfeit and pay a fine of twenty dollars.

Penalty for placing benches, etc., on sidewalk.

SEC. 11. If any person shall cut up any meat or place any block, bench or stand on any of the sidewalks of this city for the purpose of cutting up any meat thereon, he shall upon conviction thereof forfeit and pay a fine of five dollars.

Certain persons prohibited from occupying streets.

SEC. 12. No bread or cake vender, no seller of ice cream, foreign fruits, confections, prepared food, brushes, blacking, combs, essences, matches, pictures, writing paper, envelopes, ink, jewelry, medicines, toys, cutlery, hosiery, shoe laces or other articles composed of cotton, silk or woolen, in whole or in part, no juggler, mountebank or sleight-of-hand performer shall occupy any space or place in or upon any of the public streets, sidewalks, lanes or alleys of this city for the purpose of selling any of the articles above enumerated in this section, or to display acts in jugglery or sleight-of-hand performance;

Proviso, as to licensed dealers.

provided, however, that licensed dealers in the articles above enumerated shall have the right to display and sell such goods in front of any store they may occupy as renter or owner within the space of four feet of the building which he or she occupies as his or her store or place of business, but none others.

Penalty.

Any person offending against any of the provisions of this section shall upon conviction thereof forfeit and pay a fine of five dollars.

Repealed June 22, 1893.

SEC. 13. * * * * * * * * * *

Repealed Ordinance, Sept. 22, 1892.

SEC. 14. * * * * * * * * * *

Superseded.

SEC. 15. [Election of Clerk of the Market.][1]

Clerk of Market to give bond.

SEC. 16. The Clerk of the Market, before entering upon the duties of his office, (a) shall, with good and sufficient surety, become bound to The Mayor and Council of Wilmington, by a joint and several obligation, to be with the surety therein approved by the Committee on Public Buildings. The penal sum of such obligation shall be double the estimated amount of money that will come into the hands of said Clerk

1. See Act of General Assembly, March 1, 1887, Chap. 178, Vol. 18, as amended by Act of May 3, 1893, p. 157 of this volume.

of the Market during the ensuing year, according to the following form, to wit:

"*The condition of this obligation is such that if the said* ———— *being the Clerk of the Market, shall well and truly account for all moneys which shall come into his hands as such Clerk, or with which he as Clerk shall be legally chargeable, and shall and do well and diligently execute the office of the Clerk of the Market as aforesaid, and duly and faithfully fulfill and perform all the duties now to said office appertaining during his official term, then the said obligation shall be void, otherwise the same shall remain in full force and virtue.*" Conditions.

(*a*) See Sec. 11, "a" of the Charter, and the case of Pickering vs. Day, 2 Del. Ch. 333 at 334. (yr. 1866)

Duties of the Clerk of Market.

SEC. 17. The Clerk of the Market shall attend in the several markets and market houses of this city, during the market hours thereof, and at such other hours as he may deem it necessary to enforce obedience to the rules (*a*) and regulations of the markets provided for in this ordinance, or which from time to time hereafter shall be ordained by the Council in reference to such public markets. He shall weigh, try and examine all butter, lard, sausage, oleomargarine, sueine, and all articles sold in lumps of a given or accustomed weight. To see that the same are of lawful standard weight for which the same are offered, or ought to be. To also see the provisions of the Revised Statutes of the State of Delaware, Chapter 66, and the ordinance of this city entitled, "An ordinance to regulate the weights and measures used in the public markets and market houses of the City of Wilmington," so far as the same relate to selling by legal weights, measures, scales, balances or other weighing or measuring apparatus, are enforced in the public street markets and market houses of this city. To seize all forfeited articles and dispose of the same for the use of the city; to decide all disputes which may arise in the markets between buyer and seller concerning the weights or measures or things bought or sold; to collect rents of stands * * * * and receive forfeitures; to take duplicate receipts from the City Treasurer for all moneys paid by him to said Treasurer. He shall keep a book in which he shall enter a regular and just

Examination of butter.

Enforcement of law in relation to weights.

Resolution. Street and Sewer Department. March 2, 1899.

Book of accounts.

account of all money by him collected, together with the articles seized and forfeited, and submit his accounts to the Council, with his vouchers for payments made by him to the City Treasurer, at least once in every three months.

(*a*) As to the meaning of the word "rules," see the case of Morris et al vs. Pilot Coms., 7 Del. Ch. 136. (yr. 1894). Sec. 76. "a" of the Charter.

Resolution, Street and Sewer Department, March 2, 1899.

[The Board of Directors of the Street and Sewer Department shall furnish the Clerk of the Markets with a combination receipt and report book of such description that said Directors may determine, and the said Clerk of the Market shall

Receipts issued from stub book.

issue a receipt from said book to each and every person or persons from whom the said Clerk shall have collected any money for the city for any purpose whatever, which receipt shall be the only proper voucher for such person or persons to use the public market spaces therein mentioned and the Clerk of the Market shall immediately upon issuing any such receipt, file with the Secretary of the Board of Directors of the Streeet and Sewer Department, the reports accompanying each and every receipt, and when all the receipts in such book or books have been issued, the "stubs" therein remaining shall be immediately returned to the Board of Directors of the Street and Sewer Department. (*a*) The aforesaid Board of Directors shall furnish the said Clerk of the Market each and every year with a plan of the spaces in the public markets, designated to be leased, and the said Clerk of the Market shall keep said plan correctly marked as a register of all spaces leased.]

Street and Sewer Department shall furnish plan of spaces annually.

(*a*) The Street and Sewer Department, having exclusive jurisdiction over the streets "from building line to building line," has control of the markets, and general supervision over the Clerk of the Market, though "The Council" appoints the Clerk, and receives, for the use of the city, all market rents. (See Sec. 19 of this ordinance.)

Power of Clerk in case of disorders.

SEC. 18. The Clerk of the Market shall have power to call to his aid the City Constables or Police to suppress any riots or disorders that may happen in any of the markets, and to assist and support him at all times in the due exercise of the powers vested in him by the ordinances of this city.

Fees, when paid.

SEC. 19. The Clerk of the Market shall pay to City Treasurer, upon the second and fourth Saturdays of every month,

all the money he may have collected during the intervals of the same, less the sum of fifteen per centum, which the said clerk shall retain as his compensation for his services for collecting and paying over the moneys received by him for the use of the city, (a) and he shall, at the time he makes each payment to the City Treasurer, file with said Treasurer a written or printed affidavit according to the following form, to wit:

New Castle County, ss.:

Affidavit of Clerk of Market.

Personally appeared before me ——— Mayor of the City of Wilmington, ——— who, being duly ——— according to law, did depose and say, that the sum of ——— dollars by him this day paid to the City Treasurer is the total sum of all moneys received by him since his (appointment) or last settlement, doth include all moneys received by him from all sources for the use of the city, less fifteen per centum of the total amount of receipts up to this date.

Sworn and subscribed before me, this ——— day of ——— A. D., one thousand nine hundred and ———, as witness my hand and the corporate seal of said city.

Mayor of the City of Wilmington.

(a) The Street and Sewer Department, from 1887 until 1900 had been receiving the fees collected from farmers, traders, dealers and hucksters using the streets of the city. In 1900 the Court decided they belonged to "The Mayor and Council" for the use of the city, and not to the Street and Sewer Department.

Lore, C. J.: "This was a case stated, the point at issue being whether the Board of Directors of the Street and Sewer Department were entitled to have, receive and dispose of the fees and charges collected from farmers, traders, dealers and hucksters using the street markets in said city, or whether such fees and charges ought to be paid over to the Mayor and Council of Wilmington, for the general fund and uses of said city. * * Judgment was rendered in favor of the defendant in each case." (The fight was between "The Council" and the Street and Sewer Department.)

Street and Sewer Dep't vs. Connell, 2 Penn. 571 at 571-2. (yr. 1900)

SEC. 20. All penalties incurred for the violations of the provisions of this ordinance shall be recoverable in the name and for the use of the City of Wilmington.

Penalties, how recoverable.

SEC. 21. That an ordinance entitled, "An ordinance concerning the markets," passed at the City Hall, March 12th, 1860, also an ordinance entitled, "An ordinance to prevent

Certain ordinances repealed.

forestalling in the markets of the City of Wilmington," passed at the City Hall, March 16th, 1865, and all other ordinances in the printed ordinance books of the city, and in the book of written ordinances (not yet printed) concerning markets, except "An ordinance for inspection of meats," passed April 6th, 1875, are hereby repealed.

Passed at City Hall, January 5, 1883.

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[1]*RESOLUTION amending ordinance concerning markets.*

Resolution, Street and Sewer Department, July 12, 1898.

BE IT RESOLVED by the Board of Directors of the Street and Sewer Department of Wilmington, Delaware.

Clerk of Market may allot spaces in market to two persons to be used alternately.

SECTION 1. That from and after the passage of this resolution the Clerk of the Market shall have power and be authorized to allot a space or spaces in the farmers' and truckers' curbstone market in the City of Wilmington to two (*a*) actual farmers or truckers, such space to be used by one of them on Wednesdays and by the other on Saturdays upon payment by them jointly of the sum now by law payable for the use of the city and of the property owner or owners and of the additional sum of twenty-five cents each for the usual permit fee. In such cases the said Clerk shall issue proper permits to each of such persons.

Charge.

(*a*) The Act of April 15, 1885, (Sec. 3) reads,—"said clerk shall issue a certificate permitting such *person* to occupy such space for *one year,*" &c. (See p. 150 of this volume.) The statute contemplates *one* person for the *entire* year.

Farmer having space may permit others to use same.

SEC. 2. That any bona fide farmer or trucker now or hereafter having space allotted to him or her, in said market, may, in writing permit one other farmer or trucker to use his or her space in the said market upon such market days as he or she may be absent from the said market. Such permission must be in writing, must designate the person to be allowed to use the space, and must be signed by the holder of the space in the presence of the said Clerk of the Market, and the person so permitted to use such allotted space shall, at the time of sign-

Permission must be in writing.

1. See Sec. 3 of the Act of Assembly authorizing the establishment of curbstone markets, p. 150 of this volume.

ing of said permission, pay to the said Clerk of the Market, the sum of fifty cents. Charges.

SEC. 3. That hereafter the said Clerk of the Market shall be and is authorized and empowered to permit any actual farmer or trucker to use any space in the said farmers' and truckers' curbstone market on any market day when the same shall be not actually and legally occupied by some one entitled thereto, upon payment to the said Clerk, of the sum of fifteen cents for such permission. Unoccupied spaces.

SEC. 4. All fees collected by the Clerk of the Market under this resolution shall be for the use of the city, less the commission now allowed the Clerk of the Market by law for collection. Fees.

Adopted July 12, 1898.

AN ORDINANCE establishing a fruit, vegetable and produce market shed at Front and Church street wharves, in the City of Wilmington.

SECTION 1. The new market shed erected at Front and Church street wharves shall be used for market purposes only by such persons as bring their produce to the wharves aforesaid in vessels and boats, and pay wharfage for laying alongside of said wharves with their vessels or boats, or fasten the same thereto. Market at Front and Church, by whom used.

SEC. 2. No producer of fruit, vegetables or other produce of any kind, nor any dealer or huckster in fruit, vegetables or other produce whatsoever, will be allowed to use any portion of the shed aforesaid for storing any merchandise therein, or selling any merchandise therefrom, or on the wharves belonging to the city adjoining or contiguous to said market shed, unless such person did bring such fruit, vegetables or other merchandise to said wharves in a vessel or boat, and unload Who shall and who shall not occupy said market shed for market purposes.

the same in front of said market from such vessel or boat that has carried such fruits, vegetables or other produce to this city, for sale therein.

No person shall hold any particular stall in said market shed.

SEC. 3. There shall not be any particular part or portion of said market shed set apart for the use of any particular person or persons, nor shall any one person at any time use or occupy more space within such market shed for his or her produce than is absolutely necessary for him or her to display his or her merchandise therein.

Penalty for violation of this ordinance.

SEC. 4. If any other persons, other than those hereinbefore mentioned, shall store any merchandise therein, or shall sell any merchandise therefrom, such person shall, for every such offence, upon conviction thereof, forfeit and pay a fine of ten dollars, one-half of which shall be paid into the city treasury, and the other half thereof to the informer.

Resolution, Street and Sewer Department, March 2, 1899. Under control of Street and Sewer Department.

SEC. 5. [This market shall be under the direct control of the Board of Directors of the Street and Sewer Department. Persons who may be entitled to use this market will be allowed to sell therefrom every day in the year except on Sunday, at such hours as they may deem proper.]

SEC. 6. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

Passed at City Hall, August 30, 1883.

AN ORDINANCE regulating public curbstone markets.

Boundary of King and Madison streets. Ordinance, April 20, 1907.

SECTION 1. That the public curbstone markets now established on King and Madison streets in the City of Wilmington be and the same are hereby restricted to all that portion of (Madison street) lying and being south of [Ninth][1] street

1. See ordinance of January 5, 1883, with the amendment of April 20, 1907, incorporated therein, p. 818 of this volume.

(and all that portion of King street lying and being south of Ninth[1] street.) Ordinance of July 2, 1885.

Passed at City Hall, April 30, 1885.

AN ORDINANCE establishing and regulating a fruit, vegetable and grain market.[2] Ordinance, Dec. 20, 1900.

BE IT ORDAINED, by the Council of Wilmington.

SECTION 1. All that portion of Fourth street, between the building line on the westerly side of King street and the building line on the easterly side of Orange street shall be set apart and known as the fruit, vegetable and grain portion of the farmers' and truckers' curbstone market, and shall be set apart for, and be used exclusively by, farmers for the sale of fruit, vegetables and grain of all kinds raised or grown on land occupied by such farmers or owners, lessees or farmers upon the share. Location of. Name set apart. Used exclusively. What may be sold.

SEC. 2. The market hours for the sale of the farm products named in Section 1 of this ordinance, shall be the same hours as those named in the ordinance for the farmers' and truckers' market on King and Madison streets, passed at the City Hall, January 5th, 1883. Market hours.

SEC. 3. Every farmer or person standing in said market shall be allowed to display and sell his fruit, vegetables and grain on the sidewalk three feet from the curb thereof; and in the street eight feet from the curb thereof; and every farmer or person, upon backing his wagon up to the curb of said street, shall at once remove the shafts or tongue from said wagon. To display. In space. Remove shafts.

SEC. 4. The Clerk of the Market, during the month of April of each and every year, shall lay off and allot spaces on Clerk of the Market. Lay off and allot spaces.

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1. Tenth street. See Resolution of Street and Sewer Department, March 2, 1889, p. 818 of this volume.

2. See Sec. 5 of ordinance of January 5, 1883, which the above ordinance practically repeals, p. 821 of this volume. See also Sec. 4, p. 820 of this volume.

either or both sides of said above mentioned streets in the manner set forth in Section 2 of an Act entitled, "A supplement to 'An Act to revise and consolidate the statute of the City of Wilmington,' " passed at Dover, April 13th, 1883. And until the said month of April the said Clerk of the Market may allot spaces at pro rata rates in the manner above mentioned. And the said Clerk of the Market shall in all other respects comply with and carry out the provisions contained in all the sections of said Act, and the amendments thereto, so far as the same shall be applicable for the purposes of a fruit, vegetable and grain market.

Comply with and carry out.

Not more than one space on same side of street.

Allotment.

Charges.

SEC. 5. The Clerk of the Market shall not set apart or allot to any one farmer more than one space on the same side of the street of said market; but he may set apart and allot to one and the same farmer at one and the same time, for the period of one year, one space on one side of the market and one space on the other side of the market; and may charge therefor double the sum named in Section 3 of the above mentioned Act.

May sell after complying with provisions.

SEC. 6. Any farmer who has complied with all of the provisions of this ordinance, may sell fruit, vegetables and grain of all kinds as set forth in Section 1 of this ordinance, either in person or by agent.

To first comply with provisions.

SEC. 7. No farmer or person shall expose for sale in said market, any fruit, vegetable, grain or other thing whatsoever, until he has first complied with all the provisions of this ordinance.

Not to assign or sublet space.

SEC. 8. No farmer entitled to a space in said market shall give, sell, assign or let his said space, in whole or in part, for any period of time, to any person or persons, whomsoever, except as mentioned in Section 6 of this ordinance.

Restrictions as to sale of.

SEC. 9. No farmer or person shall expose for sale in said market, anything whatsoever, except fruit, vegetables or grain as set forth in Section 1 of this ordinance.

Clerk of Market shall enforce.

Authority and powers.

SEC. 10. The Clerk of the Market shall enforce all the provisions of this ordinance, and in so doing, shall possess and be vested with all the authority and powers now possessed by and vested in him; by virtue of any and all laws, charter provisions, ordinances, resolutions, regulations or rules whatsoever.

Penalty.

SEC. 11. Any farmer or person violating any of the provisions of this ordinance, shall be fined five dollars for each and every offence, to be recovered before the Judge of the Municipal Court of the City of Wilmington.

Passed at the City Hall, December 20, 1900.

CHAPTER X

ORDINANCE RELATING TO BUILDING REGULATIONS.

AN ORDINANCE providing for building regulations, for a Building Inspector, and prescribing the duties of the Building Inspector for the City of Wilmington, Delaware.

BE IT ORDAINED, by the Council of Wilmington (two-thirds (a) of all the members elected to the Council concurring herein):

(a) It requires a majority vote to pass or repeal an ordinance. See Sec. 30, paragraph 2, the Charter.

Time of election of Building Inspector.

SECTION 1. The Council of Wilmington shall, at its first stated meeting in the month of May, A. D. 1910, and at the first stated meeting in the month of May in every third year thereafter, elect a Building Inspector whose duty it shall be to carefully inspect all buildings or structures that are being erected, enlarged, altered or repaired, as well as all buildings or structures or parts of all buildings or structures that are reported to him to be in an unsafe or dangerous condition for the purpose for which they are used or are intended to be used.

Duties.

Qualifications.

SEC. 2. No person shall be eligible to the office of Building Inspector unless he shall have been at the time of his election, either a practical builder, civil engineer, house carpenter or brick layer, and shall have been actively engaged as such for at least seven years. The Building Inspector shall, before entering upon the duties of said office, enter into bond (a) with The Mayor and Council of Wilmington in the sum of four thousand dollars, with one or more sureties approved by the Finance Committee of The Council, which said bond shall be conditioned for the faithful performance of the duties of his

Bond.

office. Before entering upon the duties of his said office he shall be required to make and subscribe before some person authorized by law to administer the same, the following oath or affirmation:

"I do solemnly and sincerely swear (or affirm) that I am duly qualified by law to act as Building Inspector, and that I will faithfully, impartially and truly execute and perform the duties of Building Inspector according to the best of my judgment and ability." (*b*) Oath.

(*a*) For the legal meaning of the phrase "before entering upon the duties of said office" see the case of
Pickering vs. Day, 2 Del. Ch. 333 at 334. (yr. 1866)
See Sec. 11 "a" of the Charter.

(*b*) The above oath is not sufficient. The proper oath for "every officer of said city" to take, is prescribed by the Charter, and it must be taken.
See Sec. 5 of the Charter.

Said Building Inspector shall receive for his services a salary of fifteen hundred dollars ($1,500.00) per annum, payable monthly, and an additional rate of twenty-five dollars per month for the keeping of a horse and equipments, but said sum for the keeping of a horse and equipments shall be paid only for the time that said horse and equipments are in the actual service of the Building Inspector while said Building Inspector is engaged in the performance of the duties of his office. He shall be charged with the inspection of buildings, with the enforcement of these regulations, and with such other duties in respect thereto as The Council may from time to time assign to him. It shall be his duty to sign and issue all permits, reports and notices under these regulations, to keep on file all applications and notices received, to keep a record of all violations of this ordinance, together with the name of the owner or builder, the street and number where such violations are found, as well as all matters relating thereto; keep forms or blanks for permits, reports or notices. He shall, at the end of each month, make return to the City Treasurer of all fees collected by him. He shall make a daily as well as a monthly report of all fees collected by him, to the City Auditor, said monthly report to be itemized and sworn to, and he shall make a monthly as well as an annual report of all business trans-

Salary.

Horse for use of Inspector.

Duties.

Shall sign and keep on file all applications.

Shall return all fees collected to City Treasurer.

Shall make daily and monthly report to City Auditor.

Shall not be engaged as contractor, &c., while Inspector.

acted by his office, to The Council. While holding the office of Building Inspector he shall not be engaged as a contractor, architect or builder, or be interested in the sale or manufacture of materials used in the construction of buildings. The present Building Inspector shall continue to hold office, at his present salary, until the first stated meeting in May, A. D. 1910, or until his successor is duly elected and installed, and he shall perform all the duties prescribed by this ordinance.

Shall hold office until May, 1910.

FILING PLANS.

Unlawful to erect, alter or repair buildings or parts thereof without a permit.

SEC. 3. It shall be unlawful to proceed with the erection, enlargement, alteration, repair or removal of any building or part thereof, or any platform or staging to be used for standing or seating purposes, or of any structure within the meaning of any of the provisions of this ordinance unless a permit shall first be obtained from the office of Building Inspector.

Application shall be made in writing.

Applications for permits shall be made in writing by the owner or lessee, or the contractor employed by the owner or lessee, and shall be made upon forms or blanks to be furnished for that purpose by the office of the Building Inspector.

Plans and drawings shall be presented with application.

In all cases plans and drawings, drawn to a scale of not less than one-eighth of an inch to the foot, on paper or cloth, in ink or by some process that will not fade or obliterate, shall be presented with the application to build, alter or enlarge. All distances and dimensions shall be accurately figured and all drawings made plain and explicit.

No permit shall be granted unless plans are approved.

No permit shall be granted or plans approved unless the plans and the application accompanying same shall be stamped and approved by the Building Inspector with his signature, and no permit shall be granted unless it complies with the provisions of this ordinance.

Applicant may be compelled to give notice.

The Building Inspector may require any applicant for a permit to give notice of the application to any person whose interest may be affected by the proposed work.

Plans shall remain on file until buildings are completed.

Plans and specifications of all buildings except private dwellings, shall remain on file at the office of the Building Inspector until after the completion and occupation of the building.

Unlawful to change plans.

SEC. 4. It shall be unlawful to erase, alter or modify any lines, figures or colorings contained upon any such drawings

or specifications stamped and approved by the Building Inspector or filed with him for reference. If during the progress of the work, it is desired to deviate in any manner from the application and plans stamped and signed by the Building Inspector, notice, in writing, of such intention must be given and the consent of the Building Inspector must be obtained "in writing," before any such changes are made. *Provided*, that no such change shall be made except it conform to the provisions of this ordinance.

Notice of desire to alter plans must be given in writing.

SEC. 5. Permits shall be granted or refused within fifteen days after the application and the submission of the plans and specifications. Every permit shall be considered cancelled if active work is not commenced within the period of six months from the date of its issue. Ordinary repairs may be made without taking out a permit, but such repairs shall not be construed to include the cutting away of any brick or stone wall, or any portion thereof, the removal or cutting of any beam or support; or the removal, change or closing of any stairway.

Permits acted upon within fifteen days.

Work to commence within six months.

SEC. 6. The fees to be charged by the Building Inspector shall be as follows: For every new building to be erected or old building enlarged, altered or repaired, if the cost to the owner at the completion thereof amounts to five hundred dollars or less, the fee shall be one dollar. If the cost at the completion amounts to more than five hundred dollars and not more than one thousand dollars, the fee shall be two dollars, and one dollar for each additional thousand dollars or fraction thereof, of cost to the owner. For the inspection of heating apparatus in all buildings in which the same has not heretofore been introduced the fee for inspection shall be one dollar. For the inspection of temporary or permanent shelter sheds the fee shall be two dollars. No fee shall be charged for a permit for any National, State, County, or Municipal Buildings, or any of the departments of the municipality of the City of Wilmington, but they and each of them shall be subject to all the other provisions of the ordinance.

Fees.

No fee for certain buildings.

APPEALS.

Appeal.

SEC. 7. Any applicant for a permit from the Building Inspector required by this ordinance, whose application has been refused, or any person who has been ordered by the Inspector to incur any expense, may appeal, by giving notice in writing of such appeal. If the appeal shall be from an order refusing a permit, it shall be taken within fifteen days from the refusal of such permit and not thereafter. If the appeal is from an order to take down or remove a dangerous wall or walls or a dangerous building or structure or part of a dangerous building or structure it shall be taken within two days from the issuing of such order and not thereafter. In computing the time within which an appeal may be taken, if the last day shall fall on a Sunday or on a legal holiday, the appeal shall be taken on the preceding day.

Taken within fifteen days.

If from order to take down dangerous structure—within two days.

Notice.

Notice of appeal may be given by leaving the same at the office of the Building Inspector.

Person whose property is affected may appeal.

SEC. 8. Any person, the value of whose property may be affected by work done or to be done under any permit granted by the Building Inspector may within three days after the commencement of the work, appeal by giving notice in writing that he does so appeal. All cases in which appeals have been taken as above provided shall be referred to the Public Building Committee of City Council as a Board of Appeal. The said Board of Appeal shall, after hearing, direct the Building Inspector to issue his permit under such conditions, if any, as they may require, or to withhold the same, or to make such other or further order in the premises as the board may see proper. *Provided,* that should any party aggrieved object to the decision of the Board of Appeals, he, she or they may further appeal in writing to the Mayor of the city within three days of the decision of the Board of Appeals, specifying in such appeal the reasons and grounds therefor, and accompanying the same by the sum of thirty dollars. The Mayor of the city shall thereupon appoint three disinterested experts who shall be either master builders, engineers, or architects, who

Public Building Committee shall hear appeals.

Further appeal to Mayor by depositing thirty dollars.

Three experts examine appeal and decide.

shall within such time as the Mayor shall specify, carefully consider such appeal and make decision thereon.

The decision of any two shall be the decision of the commission. They shall be paid for their services ten dollars each. Ten dollars for each expert.

SEC. 9. The decision of the Building Inspector unappealed from shall be final and conclusive. The decision of the Public Building Committee of City Council as a Board of Appeal, in case such decision is not appealed from as above provided, shall be final and conclusive. The decision of the examining commission, in case of appeal to such commission, shall be final and conclusive when certified to the Building Inspector. *Provided, however,* that no commission named in accordance with this ordinance shall have power or authority to set aside or nullify or alter any of the provisions herein, or order or require any permit to be issued for a building to be constructed otherwise than is herein required. (*a*) Finality of decisions.

(*a*) No commission or person, of course, could change the above ordinance. Sec. 31 of the Charter prohibts even the Council from passing a *special* ordinance. See the case of
Gray vs. Baynard, 5 Del. Ch. 499 at 502. (yr. 1883)

SEC. 10. All buildings hereafter erected or altered in the City of Wilmington, except such as are hereinafter provided for, shall have all outside or division walls constructed of stone, brick, iron or other hard non-combustible material, properly bonded and solidly put together, all the said walls shall be built to a line and carried up plumb and straight, and the several component parts of such buildings shall be constructed in such manner as herein provided. Division walls must be hard non-combustible material.

FOUNDATIONS.

SEC. 11. The foundation walls of all buildings, excepting those that are erected on wharves or wharf piers on a water front, shall be laid not less than three feet below the exposed surface of the earth on solid ground or level surface of rock. Where solid earth or rock is not obtainable, the said walls may be supported by a foundation of wooden piles or caissons filled with concrete or such other foundations as the Building Inspector shall direct. Piles intended to support a wall, pier or Foundation walls not less than three feet below surface.

Piling or concrete.

post shall be spaced not more than thirty-six or less than twenty inches on centres, and they shall be driven to a solid bearing, if practicable to do so. No pile shall be used of less dimensions than five inches at the small end and ten inches at the butt for short piles, or piles twenty feet or less in length, and twelve inches at the butt for long piles or piles more than twenty feet in length. No pile shall be weighted with a load exceeding forty thousand pounds, and the tops of all piles shall be cut off below the lowest water line. When required, concrete shall be rammed down in inter-spaces between the heads of the piles to a depth and thickness of not less than twelve inches and for one foot in width outside of the piles. When ranging and capping timbers are laid on piles for foundations they shall be of hard wood not less than six inches thick and properly joined together, and their tops laid below the lowest water line.

Size of piling.

Piling shall be cut off below water line.

Size of ranging and capping timbers.

Limit of load on certain soils.

SEC. 12. Foundations of other materials than piles shall be so proportioned that the loads upon the soil shall not exceed the limits for the different kinds of soil than herein given, to wit: sand and loose gravel, three and one-half tons per square foot; dry, hard clay, three and one-half tons per square foot; cemented gravel, six tons per square foot; for soils other than those above specified, the loads to be determined by the Building Inspector. No foundation shall be laid on any soil containing organic matter. The footing or base course shall be of stone or concrete, or both, or steel beams bedded in concrete, or concrete and stepped-up brickwork; all of the said footing or base courses to be of sufficient thickness, breadth and strength to safely bear the weight to be imposed thereon. If the footing or base course be of concrete, the concrete shall not be less than twelve inches thick; if of stone, the stones shall be laid edge to edge, and shall not be less than two by three feet, and at least eight inches in thickness for walls, and ten inches in thickness for piers or columns. If stepped-up footings of brick are used in place of stone above the concrete, the offsets shall be laid in single courses, and shall not exceed one and one-half inch, starting with the brickwork, covering the entire width of the concrete.

No foundation on soil containing organic matter.

Base course of concrete.

Size.

If steel beams or rails are used for a footing or base course, they must be thoroughly embedded in concrete, the ingredients of which must be such that after proper ramming the interior of the mass will be free from cavities; the beams or rails must be entirely enveloped in concrete, and around the exposed external surfaces of such concrete there must be a coating of cement, of standard quality, at least one inch thick; this concrete, and all concrete in contact with metal work, shall be made of Portland cement, and the broken stone used shall not be limestone of any character.

Steel beams and rails must be embedded in concrete.

Limestone shall not be used.

FOUNDATION WALLS.

All foundation walls and cellar walls shall be built of stone, brick or Portland cement concrete, if constructed of stone or concrete, they shall be at least six inches thicker than the wall next above them to a depth of twelve feet below said wall, and shall be increased six inches in thickness for every additional ten feet in depth below the said twelve feet; and if of brick, they shall be at least four inches thicker than the wall next above them to a depth of twelve feet below the said wall, and shall be increased four inches in thickness for every ten feet below the said twelve feet. If there be cellars or excavations, foundation walls, except in dwelling houses, shall start at least twelve inches below the cellar bottom. Foundation walls for dwellings, private stables and carriage houses, and buildings of a similar light character, if of stone, shall not be less than eighteen inches thick.

Foundation walls.

Size.

Cellar walls.

STONE WALLS.

All stone walls twenty-four inches or less in thickness shall have at least one header extending through the wall in every three feet in height from the bottom of the wall, and in every three feet in length, and if over twenty-four inches in thickness shall have one header for every six suprficial feet on both sides of the wall, laid on top of each other to bond together, all headers shall consist of good flat stones. Stones shall be firmly bedded in mortar and all spaces and joints thoroughly filled.

Requirements as to stone walls.

Stones must be in mortar.

Certain foundations may be laid in lime mortar.

Exception.

Foundation walls of dwellings, private stables and carriage houses, and buildings of a similar light construction may be laid in lime mortar. The foundation walls of all other buildings shall be laid in cement mortar; *provided*, that this section shall not be construed to prohibit the use of cement and lime mortar, when in the judgment of the Building Inspector the nature of the construction may permit of its use.

CONCRETE AND MORTAR.

Concrete or mortar.

Proportions of cement mortar.

Lime mortar.

Portland cement must be used.

SEC. 13. It shall be unlawful to use concrete, or mortar of any kind, the ingredients of which are not thoroughly mixed, and which are not free from lumps or other unmixed portions of any of the ingredients. Cement mortar shall be made of sand and cement in the proportions of not more than three parts of sand to one part of cement, and shall be used immediately after mixing. Cement and lime mortar shall be made of one part lime, one part cement, and three parts sand to each. Lime mortar shall be made of not more than four parts of sand to one part of fresh-burnt lime, and shall not be used before being thoroughly slaked. Concrete for footings and foundations shall be made of one part cement, two parts of sand and five parts of small, clean, broken stones. Cement used in all the said mortars and concrete shall be Portland, or other equally good quality; the sand shall be clean and sharp and free from earthy matter.

Minimum thickness of brick walls for business manufacturing and public buildings.

MINIMUM THICKNESS OF BRICK WALLS FOR BUSINESS, MANUFACTURING AND PUBLIC BUILDINGS.

SEC. 14. The thickness of brick walls for business, manufacturing and public buildings, seventy-five to one hundred and twenty-five feet long by twenty-six feet or less, clear span, shall not be less than the number of inches in the following table:

	1st	2nd	3rd	4th	5th	6th	7th	8th
One-story	13	...	...	...	...	...	...	...
Two-story	13	13	...	...	...	...	...	...
Three-story	18	13	13	...	...	...	...	...
Four-story	18	18	13	13	...	...	...	...
Five-story	22	18	18	13	13	...	...	...
Six-story	22	22	18	18	13	13	...	...
Seven-story	26	22	22	18	18	13	13	...
Eight-story	26	26	22	22	18	18	13	13

For buildings of the same character, less than seventy-five feet long; also, hotels, apartment and tenement houses, the thickness of the walls may be reduced by making the three upper stories thirteen inches thick, and following from that down to the lowest story in the same sequence as in the above table. Non-bearing walls of buildings, hereinbefore in this section specified, may be four inches less in thickness. *Provided, however,* that none are less than thirteen inches thick except as hereinafter specified. If there is to be a clear span of over twenty-six feet between walls, the bearing walls shall be four inches more in thickness than is in this section specified, for every thirteen feet or fraction thereof, the said walls are more than twenty-six feet apart; all buildings over one hundred and twenty-five feet in length of depth, without a cross wall or proper piers or buttresses, shall have the side or bearing walls increased in thickness four inches more than is specified, for every seventy-five feet or fraction thereof that said walls are over one hundred and twenty-five feet in length. The amount of materials elsewhere herein specified may be used in either piers or buttresses, but no curtain wall between such pier or buttresses shall be less than thirteen inches thick. Walls surrounding stairs, elevator shafts, fire escapes and light walls, if of brick shall not be less than eight inches thick; but they shall be increased in thickness, with the increase in height, to a sufficient extent to keep the load on the brick work within the maximum load elsewhere herein specified. Nothing in this section shall be construed to prevent the erection of

Walls surrounding elevator shafts, fire escapes, &c.

Light wells of a framework of iron or steel.

light wells, constructed of a framework of iron or steel, filled in with glass.

HEIGHT OF STORIES.

Requirements as to height of stories.

SEC. 15. The height of stories for all given thicknesses of walls must not exceed eleven feet in the clear for basement, eighteen feet in the clear for the first story, fifteen feet in the clear for the second story, fourteen feet in the clear, average height, for any upper story; and if any story exceeds these heights, respectively, the walls of such story and all the walls below the same shall be increased four inches in thickness, additional to the thickness already mentioned.

PUBLIC BUILDINGS, STORES, WAREHOUSES OR FACTORIES OVER TWENTY-SIX FEET CLEAR SPAN.

Stores, warehouses or factories having over 26 feet clear span.

Iron or steel girders may be used.

SEC. 16. Stores, warehouses and factories over twenty-six feet, clear span, shall have the floors carried on brick partition walls, or girders supported by columns of wood or iron, or piers of masonry. Iron or steel trusses or girders may be used: *Provided* the supporting walls are increased in thickness by the addition of piers or buttresses to a sufficient extent to keep the load on the brickwork within the maximum load elsewhere herein specified.

Walls shall not be carried up more than one story in advance of any other walls.

Bonding.

SEC. 17. In no case shall any wall or walls of any building be carried up more than one story in advance of any other wall without the permission of the Building Inspector. The front, rear, side and party walls should be properly bonded together, or anchored to each other, every six feet in their height, by wrought iron tie anchors not less than one and one-half inches by three-eights of an inch in size. The said anchors shall be built into the side or party walls not less than sixteen inches, and into the front and rear walls so as to secure the front and rear walls to the side or party walls when not built and bonded together.

BRICK WALLS.

Brick walls.

SEC. 18. In brick walls, at least every seventh course of brick shall be a heading course, except where walls are faced with face brick, in which case at least every seventh course

shall be bonded with Flemish headers, or by cutting the corners of the face brick and putting diagonal headers behind the same, or iron ties. In all buildings where the walls are built hollow the same amount of brick or stone wall shall be used in their construction as if they were solid, as heretofore set forth, and no hollow bearing walls shall be built unless the two walls forming the same shall be connected by proper ties of the same material as the walls, or stone or iron, placed not over two feet apart. The inside four inches of all walls may be built of hard burnt hollow clay, or porous terra-cotta, blocks properly tied and bonded into the walls and of the dimensions of ordinary brick.

Hollow walls.

Hollow clay and terra-cotta blocks.

All walls of brick shall be thoroughly bonded and solidly put together, and shall be built to a line, plumb, level and straight; all bricks to be laid and bedded with well filled joints. Every course when laid shall have the joints well flushed up; all bed joints not covered are to be struck. The brick walls below the curb level of all buildings, other than dwellings and buildings of a similar light construction, shall be laid in cement mortar. Piers built for the support of any column, post or wall shall be laid in cement mortar: *Provided,* that this section shall not be construed to prohibit the use of cement and lime mortar, when in the judgment of the Building Inspector the nature of the construction may permit its use. The brick used in all buildings of this character shall be good, hard, well burned and well shaped brick.

Brick walls must be bonded.

Below curb level must be laid in cement.

Exception.

THE BUILDING INSPECTOR.

Building Inspector shall inspect existing party walls when additions are to be erected.

SEC. 19. The Building Inspector shall upon the application of any owner or owners of any buildings or their authorized agents, or upon the application of any person or persons about to erect any new building or buildings, examine any or all existing party or division walls, and if they are deemed by the Inspector to be defective, out of repair, or insufficient and unfit for the purpose of the old building existing upon the adjoining premises, or of the new buildings about to be erected, such party or division wall or walls shall be repaired or made good or taken down by the parties building, as the Inspector's

Defective walls.

decision may be. In every case where such wall or walls are defective, out of repair, or insufficient for the purpose of the buildings there existing upon the adjoining premises and using the same, the cost or expense of such repair or removal, together with the expense of the new wall or walls to be erected in lieu thereof, shall be borne and paid by the owner of said buildings upon the adjoining premises and the party erecting the new buildings in proportion to the amount of such wall or walls which is or shall be respectively used by their said buildings; and in every case where such wall or walls are defective, out of repair, or insufficient only for the purpose of the new buildings, the cost and the expense of such repair or removal, together with the expense of the new wall or walls to be erected in lieu thereof, shall then be borne and paid exclusively by the parties erecting the new buildings, and they shall also in such case make good all damages occasioned thereby to the adjoining premises.

Apportion Expense.

OLD PARTY WALLS.

Old party walls may be used if height is not increased.

SEC. 20. Walls heretofore built for or used as party walls whose thickness at the time of their erection was in accordance with the requirements of the then existing laws, but which are not in accordance with the requirements of this ordinance, may be used, if in good condition, for the ordinary use of party walls: *Provided*, the height of the same be not increased. In case it is desired to increase the height of the existing party or independent walls, which are less in thickness than required under this ordinance, the same may be done with a lining of brickwork to form a combined thickness with the old walls of not less than four inches more than the thickness required for a new wall, corresponding with the total height of the wall when so increased in height.

Manner in which height may be increased.

Thickness of lining.

The said lining shall be supported on proper foundations and carried up to such a height as the Building Inspector may require. No lining shall be less than nine inches in thickness and all lining shall be laid up in cement mortar, and thoroughly anchored to the old brick walls with suitable wrought iron anchors, placed two feet apart, and properly fastened or driven into the old walls in rows, alternating vertically and

horizontally with each other; the old walls being first cleaned of plaster and other coatings where any lining is to be built against the same. In all cases where there is such increase of walls a new foundation shall be built, in such manner as to carry jointly both the new and old walls, and the soil under such foundation shall not be loaded beyond the limits elsewhere herein specified. This section shall not be construed to prohibit the raising of the party walls in dwellings an additional story, if upon inspection the walls are found good, and the load on the brickwork is within the maximum elsewhere herein specified.

Increase of old walls require new foundation.

How party walls may be raised.

RECESSES IN WALLS.

SEC. 21. No recess shall be made in any wall more than one-third of its thickness. Recesses for alcoves shall not exceed eight feet in width, and shall be arched over and not carried up higher than eighteen inches below the floor next above. The aggregate area of recesses in any wall shall not exceed one-fourth of the whole area of the face of the wall on any story, nor shall any such recesses be made within a distance of six feet of any other one in the same wall. If there be stone ashlar used for the facing of any building, the said stone ashlar, if three inches thick or less, shall not be reckoned in the thickness of the wall. All stone used for the facing of any building except where alternate headers and stretchers, shall be strongly anchored with iron anchors set in each stone at least one inch. This section shall not be construed as to prevent chases for water, soil or heat pipes in nine inch brick walls, when said brick walls do not exceed twenty feet in height.

Recesses in walls.

MINIMUM THICKNESS OF BRICK WALLS FOR PRIVATE DWELLINGS, ETC.

SEC. 22. The minimum thickness for all brick walls of private dwellings, private stables and carriage houses, shall be as follows: All such buildings with a floor area on any floor of eight hundred square feet or less, provided the height of said building does not exceed 36 feet, shall be constructed with external and party or division walls at least 9 inches in thick-

Minimum thickness of brick walls for private dwellings, etc.

ness. If the floor area on any floor is more than eight hundred square feet and less than fourteen hundred square feet, and the height of the building does not exceed 38 feet, all the walls shall be 13 inches in thickness to the second floor joists. If the floor area on any floor is fourteen hundred square feet and less than eighteen hundred square feet, and the height of the building does not exceed 38 feet, all the walls shall be at least thirteen inches in thickness to the third floor joists. If the floor area on any floor exceeds eight hundred square feet, all the walls shall be at least 13 inches in thickness the entire height. The Building Inspector shall have authority to increase the thickness of any of the walls herein specified, if in his judgment the nature of the construction requires it to be done.

All walls shall be squared up thirteen inches thick, with hard burned brick, to the top of the first floor joists. No soft or salmon brick shall be used in the exposed walls of any building described in this section. Party walls, if built of stone, shall be at least eighteen inches thick. The party walls of all buildings shall be built up and extended at least ten inches above the roof, and be corbelled out at least two inches beyond all projections and cornices with solid masonry. Where the roof is mansard (unless the same is constructed of fireproof material throughout), the lower slope of said wall shall extend at least six inches distant and parallel with the roof covering, and be corbelled out at least two inches beyond the outer edge of all projections with solid masonry. All party walls shall be coped with stone or metal or other hard incombustible material.

Thickness of stone party walls.

Mansard roofs.

Cellars under whole house.

Bottom of cellars shall be concreted.

SEC. 23. In all dwellings hereafter erected the cellars shall extend underneath the whole house and be ventilated from both ends. The bottom of all cellars shall be covered with concrete at least two inches thick, or such material as shall be approved by the Building Inspector.

Open space at rear.

Every such new dwelling house shall have an open space attached to it in the rear or at the side equal to two hundred square feet of clear space, unobstructed by any overhanging structure.

CHIMNEYS AND FLUES.

Chimneys and flues.

SEC. 24. In buildings hereafter erected, altered or repaired, all chimneys shall be built of brick, stone or other incombustible material. Brick chimneys shall have walls at least nine inches thick, unless terra cotta flue linings are used, in which case four and one-half inches of brickwork may be omitted. All chimneys or smoke flues shall have a wall nine inches thick at the back, and when corbelled out shall be supported by at least five courses of brick, and if supported by piers, the same shall start from the foundation on the same face with the breast above.

Thickness of walls.

Chimneys shall be bonded to walls.

All chimneys shall be bonded to the walls at every course from the bottom to the top. The inside of all brick flues shall be built of hard burnt brick and have struck joints, except when lined with terra cotta. All chimneys shall be topped out at least three feet from the top of the roof at point of contact if a flat roof, and at least two feet above the ridge of a pitched roof. No chimney in any building already erected or hereafter to be built shall be cut off below, in whole or in part, and supported by wood, but shall be wholly supported by stone, brick or iron, and all chimneys in any building already erected or hereafter to be erected, which shall be dangerous in any manner whatever, shall be repaired and made safe or taken down. No wood furring shall be used against or around any chimney, but the plastering shall be directly on the masonry or on the metal lathing. Flues of ranges and boilers, and other similar flues shall have the outside exposed to the height of the ceiling, or be plastered to the bricks.

No wood shall be used against or around chimneys.

FIREPLACES AND HEARTHS HOW CONSTRUCTED.

Construction of fireplaces.

SEC. 25. All hearths shall be supported by trimmer arches of brick, stone, iron or concrete, or be of single stone at least six inches thick, built into the chimney and supported by iron beams, one end of which shall be securely built into the masonry of the chimney or an adjoining wall, or which shall otherwise rest upon incombustible support. The brick jambs of every fireplace or grate opening shall be at least nine inches wide each, and the backs of such openings shall be at least nine

Width.

inches thick. All hearths and trimmer arches shall be at least twelve inches longer on either side than the width of such opening, and at least eighteen inches wide in front of the chimney breast. Brickwork over fireplaces and grate openings shall be supported by iron bars or brick or stone arches. All brick-set or portable ranges shall be set on hearths of brick, slate or cement, the said hearths to extend at least twelve inches beyond the face of the range. No brick-set or portable range, or heating apparatus of any kind, shall be set against a wood or lath and plaster partition.

Portable ranges shall be on brick, &c.

HOW STOVE PIPES MAY ENTER FLUES.

How stove pipes may enter flues.

SEC. 26. No stove pipe in any building with combustible floors and ceilings shall hereafter enter any flue nearer than twelve inches from the floor or ceiling, and in all cases when smoke pipes pass through the stud or wooden partitions, floors or roof, whether plastered or not, they shall be guarded by either a double collar or metal, with at least two inches of air space all around and holes for circulation of air, or by a soapstone ring or solid casting of plaster of paris, not less than three inches in thickness, and extending through the partition, or by an earthenware ring one inch from the pipe at every joint.

FURNACES, BOILERS AND SMOKE PIPES.

Furnaces, boilers and smoke pipes.

SEC. 27. In all cases where hot water, steam, hot air or other furnaces are used the top of the furnace and smoke pipe shall be at least eighteen inches below the joists or ceiling above the same unless said joists or ceiling shall be properly protected by a shield of metal plate suspended above the said pipe with at least three inches of space for the free circulation of air above and below the said shield, in which case the smoke pipes shall be kept at least ten inches from the aforesaid joists or ceiling; no boiler to be used for steam or motive power, and no furnace shall be placed on any floor above the cellar floor unless the same is set on non-combustible beams and arches, or an incombustible platform, and in no case without a permit from the Building Inspector.

HOT AIR REGISTER AND FLUES.

Hot air registers must be set in soapstone, &c.

SEC. 28. All hot air registers set in the floor of any building shall be set in a border of soapstone or other fireproof material, and all floor or register boxes to be made of sheet metal with flange on top to fit the groove in the border, the register to rest upon the same, and there shall also be an open space of two inches on all sides of the register box, extending from the under side of the ceiling to the border of the floor, the outside of the space to be covered with a casing of metal made tight on all sides, and to extend from the under side of the aforesaid ceiling up to and turn under the said border. No tin or metal flue or flues, pipe or pipes, or register box or boxes of a single thickness of metal, used and intended to convey heated air in any building hereafter to be built, altered or repaired, shall be allowed, unless the same be built in a wall of brick or stone. In all other cases, the said flue or flues, pipe or pipes, register box or boxes, shall be made double; that is, two pipes, one inside the other, at least one-half inch apart, or covered with wire lathing, and the studding covered with tin or other fireproof material, so as to be thoroughly fireproof. *Provided*, that it shall not apply to pipes leading from a heater to the hot air flue. No wood furring or lath shall be placed against any flue, metal pipe, or pipes, used to convey heated air or steam in any building. No permanent or stationary heating apparatus of any kind whatever shall be introduced in any building now erected without a permit from the Building Inspector.

Tin or metal flues of a thickness not permitted unless built in the wall.

No stationary heating apparatus without permit.

WOOD GIRDERS, JOISTS, ETC.

Wood girders not nearer than two inches of any flue.

SEC. 29. In no building shall any wooden girders, joists or timbers be placed nearer than two inches of the outside of any smoke, hot air or other flue; and all joists or other timbers in the party walls of any buildings hereafter erected whether built of stone, brick or iron, shall be separated from the joists or timbers entering into the opposite side of the wall by at least two inches of solid mason work. Every trimmer over four feet long, except in a dwelling, shall be hung in wrought or malleable iron stirrups of suitable dimensions, and no timber shall be used in any wall of any building where stone, brick or iron is commonly used, except bond timbers and lin-

tels as hereinbefore provided for, or as may be approved by the Inspector, and no exposed bond timber in any wall shall in width and thickness exceed that of a course of brick. Where stud partitions are parallel with the joists, the joists supporting them are to be doubled in all cases. Each tier of joists shall be anchored to the bearing walls at intervals of not more than ten feet with good, strong wrought iron anchors. Where the joists are supported by girders, the girders shall be anchored to the walls, all the said joists or girders shall be so anchored that in falling they will free their own anchorage without injury to the wall. The ends of joists resting upon girders, if butted together end to end, shall be strapped with wrought iron straps at the same joists that is anchored to the wall, or they may lap each other and be thoroughly spiked or bolted together. Where joists are hung in iron stirrups from the girders they must be strapped as before described. Floor joists shall be placed not more than sixteen inches from centre to centre and must be properly bridged with one row of bridging for each eight feet of span. All joists that are used must be sound and well seasoned. No floor joists shall be blocked up or levelled on more than one dry course of brick. The ends of all wood floor and roof beams, where they rest on brick or stone walls shall be cut to a bevel of at least two inches on their depth.

Stud partitions.

Joists—end to end shall be strapped.

Floor joists —not more than 16 inches from centre to centre.

Gas or water pipes not within 24 inches of ends.

All gas, water or other pipes introduced into any building shall not be let into the joists unless the same be placed within twenty-four inches of the ends of said joists, and in no building shall the pipes be let into the joists more than two inches in depth.

ROOF COVERING.

Roof covering.

Materials.

SEC. 30. The planking and sheathing of the roof of every building hereafter to be erected or altered shall in no case be extended across the party wall thereof, and every such building and the tops and sides of every dormer window thereon, except such as are hereinafter provided for, shall be covered with slate, zinc, tin, iron, copper, or such other equally good fireproof material as the Building Inspector may authorize. Nothing in this section shall be construed to prohibit the re-

pairing of a shingle roof, provided the repairs do not amount to over one-half of the value of said roof, in which case the whole must be replaced by some fireproof material. All buildings shall be kept provided with proper metallic leaders for conducting water from the roof to the ground or sewer, in such manner as shall protect the walls and foundations from damage. Metallic water conductors.

MEANS OF EXIT THROUGH THE ROOF.

SEC. 31. All buildings hereafter to be built with flat roofs shall have scuttle frames and covers, or bulkheads and doors, to be open outward, and be covered with some fireproof material, and scuttles shall have stationary ladders leading to the same, and all such scuttles and ladders shall be kept so as to be ready for use at all times; all scuttles shall be in size of opening at least two feet by three feet, and if a bulkhead is used in any building in place of a scuttle it shall have stairs with a sufficient guard or hand-rail leading to the roof, and in case the building be a tenement house, the doors or covers to scuttles or bulkheads shall at no time be locked, but may be secured by bolts or hooks on the inside. Exit through roof. Size of opening.

EXTERIOR CORNICES AND GUTTERS.

SEC. 32. All exterior cornices and gutters hereafter erected shall be of some fireproof material, and in every case, except when carried on a framework of iron or steel, the greatest weight of the material of which the cornice shall be constructed shall be on the inside of the outer line of the wall, allowance being made for the leverage produced by the projection of the cornice beyond the face of the wall; and in all cases the walls shall be carried up to the under side of the roof planking and where the cornice projects above the roof, the wall shall be carried up to the top of the cornice. All exterior wooden cornices that may be or shall hereafter become unsafe shall be taken down, and if replaced, shall be constructed of some fireproof material. All exterior wood cornices or gutters that may hereafter be damaged by fire or by decay to the extent of one-half the value thereof, shall be taken down, and if replaced shall be constructed of some fireproof material, but if not damaged to this extent, may be repaired with the same Exterior cornices and gutters. Of fireproof materials. Repairs.

Exception.

kind of material of which originally constructed. This section shall not be construed to prohibit the construction or repair of wooden cornices on private dwellings built in sections of the city where the majority of the buildings of the block or street are used only for dwelling purposes.

PUBLIC BUILDINGS, ETC., MEANS OF EXIT.

Public buildings shall have certain means of egress.

SEC. 33. All buildings hereafter erected or altered to be used as a school-house, hospital, asylum, hotel, apartment or tenement house, office building, store, manufactory, (*a*) or workshop, or place of assembly or resort, shall have such number of good and sufficient stairways, or other means of egress, as shall be determined by the Building Inspector. (*b*) Stores in which any of the stories above the second have a clear floor space of four thousand square feet, and manufactories three or more stories in height, of the floor area per story of three thousand square feet, shall have a tower stairway, completely inclosed, on the interior of the building, with brick walls of such other fireproof materials as shall be accepted by the Building Inspector. Should the floor area of any store above the second, in said stores or manufactories, exceed ten thousand square feet, the Building Inspector may require one or more additional tower stairways.

Tower stairway in factories and stores.

(*a*) For a construction of words used in the prior building ordinance, in force when the above ordinance was passed, see the case of Giles vs. Diamond State Iron Co., 7 Houst. 453 at 465. (yr. 1887)

(*b*) As to fire escapes, see Revised Code of 1893, p. 929.

ARCHES AND LINTELS.

Arches in doors and windows.

SEC. 34. Openings for doors and windows in all buildings, except as otherwise provided, shall have good and sufficient arches of stone, brick or terra cotta, well built and keyed, with good and sufficient abutments or lintels of stone, as follows:

Sizes.

For an opening not more than four feet in width the lintel shall not be less than seven and one-half inches in height and three inches in thickness; for an opening not more than six feet in width, the said lintel shall not be less than ten inches in height and four inches in thickness; for an opening

more than six feet and less than eight feet in width the said lintel shall not be less than twelve inches in height and four inches in thickness; all lintels eight feet and over in width, shall be iron or steel beams or girders. No lintels shall have a bearing of less than four and one-half inches on the walls, and on the inside of all openings six feet or less in width, in which the lintels shall be less than the thickness of the wall to be supported, there shall be a good and proper size timber lintel, which shall rest at each end not less than four and one-half inches on the wall, and shall be bevelled on each end, and shall have a double counter or dead arch turned over the same when practicable. Openings over six feet and less than eight feet in width shall have the inside lintel of iron or steel.

IRON OR STEEL BEAMS SPANNING OPENINGS.

Iron or steel beams spanning openings.

SEC. 35. All iron or steel beams or girders used as lintels to span openings eight feet or over in width and not exceeding twelve feet, upon which a wall rests, when not supported by iron or steel jamb boxes, shall have a bearing of at least eight inches at each end by the thickness of the wall supported. For openings over twelve feet, the bearing shall be at least twelve inches. When the lintels or girders are supported at the ends by brick walls or piers, they shall rest upon cut granite or other stone blocks of equal strength, or cast iron plates of equal strength may be used. If the opening is twelve feet or less, the stone block shall not be less than eight inches thick, and shall be proportionately increased when the opening is more than twelve feet. All blocks or plates used shall be the full size of the bearings. In all cases the bearing shall be sufficient to support the weight placed upon it with safety. All iron or steel beams or girders used in any building shall be throughout not less in width than the thickness of the wall to be supported.

Girders shall rest on granite or stone.

Iron or steel girders not less in thickness than that of the wall.

TEMPORARY WOODEN SHEDS FOR MECHANICS.

Temporary wooden sheds.

SEC. 36. Whenever the owner of any lot of ground is desirous of improving the same by the erection of a new building or buildings thereon, the Building Inspector may permit the owner of such lot to put up a wooden shed on the same or the

neighboring lot for the use of the mechanics employed on said building while preparing their work; *provided, however,* that such permission shall not extend to a longer time than until the building proposed to be erected shall be entirely finished, at which time the owner or owners of the lot on which such shed has been put up shall cause it to be taken down and removed.

FRAME KITCHENS.

Frame kitchens.

SEC. 37. It shall only be lawful to erect frame kitchens to be attached to a brick or stone dwelling as follows: The said kitchen shall not exceed twelve feet in height and must not connect with any frame bay projecting from an upper story, said kitchen shall not be erected within five feet of any similar construction composed wholly or in part of wood, unless the sides of said kitchen facing such structure shall be covered with fireproof material, and in no case shall the distance dividing such structures be less than three feet unless the ends shall have division walls of masonry not less than nine inches thick built from the foundation of the building and carried up above the roof as hereinbefore provided for party walls. No such kitchen shall exceed in dimensions twelve by sixteen feet or cover more than one hundred ninety-two square feet of ground. The brick or stone wall from which the said frame kitchen extends must continue up above the roof of same, and have no communication with the main building except the doorway leading thereto.

Size.

Restrictions.

FRAME SHELTER SHEDS.

Permit for shelter sheds upon consent of adjoining property owners.

SEC. 38. Permits to build frame shelter sheds for the storage of grain, coal, lumber, etc., may be granted by the Building Inspector provided the consent of the property owners "on both sides of street where the proposed shed is to be located" is obtained in writing. All permits for the erection of frame sheds may be revoked, and the shed shall be removed within thirty days after notice from the Building Inspector.

BAY AND ORIEL WINDOWS.

No bay and oriel windows on first floor.

SEC. 39. It shall not be lawful to erect or construct upon

the first story of any building any bay, oriel, store or bulk window, projecting beyond the street line. (a)

(a) If the ordinance be violated by one building a bay window *beyond* the building line, the Court of Chancery will not interfere and grant an injunction, unless the "encroachment * * be of such a character as to materially and substantially interrupt or impede the public use of the same as a street or highway." (500)

The Chancellor: "In a clear case of substantial and material encroachment upon a public street or highway, of such a character as to seriously interfere with its use, I would consider it my duty to act without the aid of a jury, but where the encroachment, although illegal, is not of that character, the proper tribunal is a court of law, which has full power, not only to punish the offender, but to abate the nuisance." The "remedy is by indictment."

Gray vs. Baynard, 5 Del. Ch. 499 at 505. (yr. 1883)

It shall not be lawful to erect or construct any bay or oriel window on the second or any upper stories of any building, projecting more than three feet beyond the building line.

Distances. No two bay or oriel windows, upon the same story shall be built nearer to each other than five feet.

Materials. Bay or oriel windows may be built of combustible material in private dwellings of three stories or less in height; *provided*, such bay or oriel windows shall not have a greater width than fourteen feet at wall line of building, and *provided*, that the outside walls and roofs of such bay or oriel windows except such as are hereinafter provided for, are covered with slate, tile or metal, or other hard incombustible material. In all other cases, bay or oriel windows and their supports shall be constructed entirely of incombustible material.

BALCONIES AND PORCHES.

Balconies and porches. SEC. 40. Porches built of combustible material, resting on masonry foundations not less than one foot above finished grade may be two stories in height if attached to non-fireproof dwellings, but no outside wooden stairs shall be constructed more than one story high. No wooden balcony or porch shall project from any building above the third floor joist.

WOODEN FENCES.

Wooden fences. Height. SEC. 41. It shall not be lawful to build any fence of wood dividing or enclosing any property, of a greater height than

ten feet from the ground, nor any fence beyond the building line. *Provided, however,* that railings may be constructed around excavated areas now existing. This section shall not prohibit the erection of a temporary fence during building operations, but no such fence shall be erected more than five feet from the building line.

MANSARD ROOFS.

Mansard roofs.

SEC. 42. Mansard roofs. If a mansard or other roof of like character having a pitch of over sixty degrees be placed on any building, except a dwelling house not exceeding three stories nor more than forty feet in height, it shall be constructed of iron rafters and lathed with iron or steel on the inside and plastered, or filled in with fireproof material not less than three inches thick and covered with metal, slate or tile.

FRAME BUILDINGS DAMAGED BY FIRE.

Frame buildings damaged not more than half in value to be repaired.

SEC. 43. Every wood or frame building with a brick or other front, which may be damaged by fire, or the effects of the elements to an amount not greater than one-half of the value thereof, exclusive of the valuation of the foundation thereof, at the time of such damage, may be repaired or rebuilt, but if such damage shall amount to more than one-half of such value thereof, exclusive of the value of the foundations, then such building shall not be repaired or rebuilt, but shall be taken down.

The Building Inspector shall determine the extent of such damage.

STRENGTH OF FLOORS AND ROOFS.

Strength of floors and roofs.

SEC. 44. All floors shall be constructed to bear a safe weight per superficial foot exclusive of the weight of the material of which they are composed, as follows: Private dwellings, fifty pounds; hotels, tenements and school rooms, sixty pounds. Office buildings, one hundred pounds for the first floor; seventy pounds for the upper stories.

Public assembly rooms, ninety pounds. For dance halls and corridors of all public buildings, including hotels, one hundred and twenty pounds.

Stores, warehouses and manufactories, one hundred and fifty pounds, and upwards in proportion to the load they have to carry. All roofs shall be constructed to carry thirty pounds per superficial foot.

FACTORS OF SAFETY.

Factors of safety.

SEC. 45. Where the working stresses for any material is not prescribed in this ordinance, the relation of allowable unit stress to ultimate strength shall be as one to four for all timbers and metals, subjected to tension or a transverse stress; as one to four for all columns, posts and other vertical supports when of metal as one to six for timber, and as one to ten for natural or artificial stone, other materials subjected to a compressive strain. But wherever working stresses are prescribed in this ordinance, varying the factors of safety hereinabove given, the same working stresses shall be used.

Working stress.

CALCULATIONS. STRENGTH OF MATERIALS.

Calculations.

SEC. 46. Safe load for masonry work. The safe bearing load to apply to brickwork shall be taken at eight tons per superficial foot, when lime mortar is used; eleven and one-half tons per superficial foot when lime and cement mortar mixed is used; fifteen tons per superficial foot when cement mortar is used. The safe bearing load to apply to rubble stone work shall be taken at ten tons per superficial foot when Portland cement is used; when cement other than Portland is used, eight tons per superficial foot; when lime and cement mortar is used, seven tons per superficial foot, and when lime mortar is used, five tons per superficial foot. The safe bearing to apply to concrete when Portland cement is used shall be taken at fifteen tons per superficial foot, and when cement other than Portland is used, eight tons per superficial foot.

Strength of materials.

STRENGTH OF COLUMNS.

Strength of columns.

SEC. 47. In columns or compression members with flat ends of cast iron, steel, wrought iron or wood, the stress per square inch shall not exceed that given in the following tables:

When length divided by least radius of gyration equals	Working stresses per sq. inch of section. Cast Iron.	Steel.	Wrought Iron.
120	.....	8,240	4,400
110	.....	8,820	5,200
100	.....	9,400	6,000
90	.....	9,980	6,800
80	.....	10,560	7,600
70	9,200	11,104	8,400
60	9,500	11,720	9,200
50	9,800	12,300	10,000
40	10,100	12,880	10,800
30	10,400	13,460	11,600
20	10,700	14,040	12,400
10	11,000	14,620	13,200

And in like proportion for intermediate ratios.

When the length divided by least diameter equals	Working stress per sq. in. of section. Long Leaf Yellow Pine	White Pine Norway Pine Spruce	Oak
30	460	350	390
25	550	425	475
20	640	500	560
15	730	575	645
12	784	620	696
10	820	650	730

And in like proportions for intermediate ratios. Five-eighths the value of white pine shall also apply to hemlock and chestnut posts.

Columns and compression members shall not be used having an unsupported length of greater ratios than given in the tables.

COLUMNS ECCENTRICALLY LOADED.

Columns eccentrically loaded.

Any column eccentrically loaded shall have the stresses caused by such eccentricity computed, and the combined stresses resulting from such eccentricity at any part of the column, added to all other stresses at that part, shall in no case exceed the working stresses stated in this code.

The eccentric load of a column shall be considered to be distributed equally over the entire area of that column at the next point below at which the column is securely braced laterally in the direction of the eccentricity.

WORKING STRESSES.

Working stresses.

The safe carrying capacity of the various materials of construction (except in the case of columns) shall be determined by the following working stresses in pounds per square inch of sectional area:

CAST IRON.

Cast iron tension.

Extreme fibre strain tension.....2,500 lbs.

	Wrought Iron	Steel
Extreme fibre stresses, "I" beams and shapes	12,000	16,000
Extreme fibre stresses, built beams	10,000	15,000
Tension	12,000	15,000
Shearing	7,500	10,000
Direct bearing pins and rivets	15,000	20,000
Bending on pins	18,000	22,500

TIMBER—(STRESSES IN POUNDS PER SQUARE INCH.)

	On Extreme Fibre	Shearing Along Grain	Compression Perpendicular to Grain
Hemlock	990	60	250
Spruce	1260	80	300
Long-leaf Yellow Pine	1600	100	500

The working stresses above given for timber, are based on straight grained, well seasoned lumber. The allowable deflection for beams or girders shall not exceed one-thirtieth of an

inch per foot of span, where the ceiling is to be plastered, or one-twenty-fifth of an inch per foot of span where the ceiling is not to be plastered.

Every temporary support used during the erection or alteration of any building shall be of sufficient strength to carry safely the load to be placed thereon.

IRON AND STEEL CONSTRUCTIONS.

Columns to support iron or steel girders shall be of cast iron, &c.

SEC. 48. *Skeleton Construction.*—Where columns are used to support iron or steel girders carrying inclosure walls, the said columns shall be of cast iron, wrought iron or rolled steel, and on their outer and inner surfaces be constructed to resist fire by having a casing of brickwork or approved fireproof material not less than nine inches in thickness on the outer surfaces, nor less than four inches in thickness on the inner surface, and all bonded into the inclosure walls. The

Sides of iron girders shall be covered with fireproof coverings.

sides of the iron or steel girders shall be similarly covered in with brickwork or fireproof material not less than four inches in thickness on the outer surfaces, and tied and bonded; but the extreme outer edge of the flanges or beams, or plates or angles connected to the beam may project to within two inches of the outside surface of the casing. The inside surfaces of girders shall be similarly covered, or, if projecting inside of the wall, they may be protected by terra cotta, concrete or other fireproof material. Girders for the support of the inclosure wall shall be placed at the floor line of each story. No part of a steel or wrought iron column shall be less than one-quarter of an inch thick. No wrought iron or rolled steel columns shall have an unsupported length of more than forty times the least lateral dimension or diameter except as modified by this ordinance, and also except in such cases as the Building Inspector may especially allow a great unsupported length. The ends of all columns shall be faced to a plane surface at right angles to the axis of the columns, and the connection between them shall be made with spliced plates. The joint may be effected by rivets of sufficient size and number to transmit the entire stress, and then the spliced plates shall be equal in sectional area to the area of the column applied. When the

section of the columns to be spliced is such that spliced plates cannot be used, a connection of plates and angles may be used designed to properly distribute the stress. No material shall be used in any wrought iron or steel column of less thickness than one thirty-second of its unsupported width, measured between centers of rivets transversely, or one-sixteenth the distance between centers of rivets in the direction of the stress. Size of material. Stay-plates are not to have less than four rivets, and are to be spaced so that that the ratio of length by the least radius of gyration of the parts connected does not exceed forty. Stay-plates. The distance between nearest rivets of two stay-plates shall in this case be considered its length. Steel and wrought iron columns shall be made in one, or three-story length, and the material shall be rolled in one length wherever practicable to avoid intermediate splices. Where any part of the section of a column projects beyond that of the column below, the difference shall be made up by filling plates secured to column by the proper number of rivets. Shoes of iron or steel, as described for cast iron columns, or built shoes of plates and shapes may be used, complying with same requirements. Shoes of iron or steel.

SEC. 49. *Cast Iron Columns.*—Cast iron columns shall not have less diameter than five inches or less thickness than three-quarters of an inch. Dimensions of cast iron columns. Nor shall they have an unsupported length of more than twenty times their least diameter. All cast iron columns shall be of good workmanship and material. The top and bottom flanges, seats and lugs shall be of ample strength, reinforced by fillets and brackets; they shall not be less than one inch in thickness when finished. All columns must be faced at the ends to a true surface perpendicular to the axis of the column. Column joints shall be secured by not less than four bolts each, not less than three-quarters of an inch in diameter. The holes of these bolts shall be drilled to a template. The core of a column below a joint shall be not larger than the core of the column above and the metal shall be tapered down for a distance of not less than six inches, or a joint plate may be inserted of sufficient strength to distribute the load. The thickness of metal shall be not less than one-twelfth the diameter of the greatest lateral dimension of cross Dimensions.

section, but never less than three-quarters of an inch. Wherever the core of a cast iron column has shifted more than one-fourth the thickness of the shell, the strength shall be computed assuming the thickness of metal all around equal to the thinnest part, and the column shall be condemned if this computation shows the strength to be less than required by this ordinance. Where blowholes or imperfections are found in a cast iron column which reduces the area of the cross section at that point more than ten per cent., such column shall be condemned. Cast iron posts or columns not cast with one side or back before being set up in place, shall have a three-eighths of an inch hole drilled in the shaft of each post or column by the manufacturer or contractor furnishing the same, to exhibit the thickness of the castings; and any other similar sized hole or holes which the Building Inspector may require, shall be drilled in the said posts or columns by the said manufacturer or contractor at his own expense.

Imperfections.

Iron or steel shoes under columns.

Iron or steel shoes or plates shall be used under the bottom tier of columns to properly distribute the load on foundation. Shoes shall be planed on top.

SEC. 50. *Double Columns.*—In all buildings hereafter erected or altered, where any iron or steel column or columns are used to support a wall or part thereof, whether the same be an exterior or an interior wall, and columns located below the level of the sidewalk which are used to support exterior walls or arches over vaults, the said column or columns shall be either constructed double, that is, an outer and an inner column, the inner column alone to be of sufficient strength to sustain safely the weight to be imposed thereon, and the other columns shall be one inch shorter than the inner columns, or such other iron or steel column of sufficient strength and protected with not less than two inches of fireproof material securely applied, except that double or protected columns shall not be required for walls fronting on streets or courts.

Size of columns.

Dimension of iron or steel posts to be used as a party wall.

SEC. 51. *Party Wall Posts.*—If iron or steel posts are to be used as a party wall, and intended for two buildings, then the said posts shall be not less in width than the thickness of

the party wall, nor less in depth than the thickness of the wall to be supported above. Iron or steel posts in front or side, division or party walls, shall be filled up solid with masonry and made perfectly tight between the posts and walls. Intermediate posts may be used, which shall be sufficiently strong, and the lintels thereon shall have sufficient bearings to carry the weight above with safety.

Iron or steel posts or columns with one or more open sides and backs shall have solid iron plates on top of each, excepting when pierced for the passage of pipes.

Rivet spaces.

Length of rivets.

SEC. 52. *Steel and Iron Girders.*—Rivets in flanges shall be spaced so that the least value of a rivet for either shear or bearing is equal or greater than the increment of strain due to the distance between adjoining rivets. All other rules given under riveting shall be followed. The length of rivets between heads shall be limited to four times the diameter. The compression flange of plate girders shall be secured against buckling, if its length exceeds thirty times its width. If splices are used, they shall fully make good the members spliced in either tension or compression. Stiffeners shall be provided over supports and under concentrated loads; they shall be of sufficient strength, as a column, to carry the loads, and shall be connected with a sufficient number of rivets to transmit the stresses into the web plate. Stiffeners shall fit so as to support the flanges of the girders. If the unsupported depth of the web plate exceeds sixty times its thickness, stiffeners shall be used at intervals not exceeding one hundred and twenty times the thickness of the web.

Stiffeners.

Beams used as girders.

Size.

SEC. 53. *Rolled Steel and Wrought Iron Beams Used as Girders.*—When rolled steel or wrought iron beams are used in pairs to form a girder, they shall be connected together by bolts and iron separators at intervals of not more than five feet. All beams twelve inches and over in depth shall have at least two bolts to each separator.

Size of cast iron lintels.

SEC. 54. *Cast Iron Lintels.*—Cast iron lintels shall not be used for spans exceeding sixteen feet. Cast iron lintels or

beams shall not be less than three-quarters of an inch in thickness in any of their parts.

Granite or bluestone blocks supports.

SEC. 55. *Plates Under Ends of Lintels and Girders.*—When the lintels or girders are supported at the ends by brick walls or piers they shall rest upon cut granite or bluestone blocks at least ten inches thick, or upon cast iron plates of equal strength by the full size of the bearings. In case the opening is less than twelve feet, the stone blocks may be five inches in thickness, or cast iron plates of equal strength by the full size of the bearings, may be used, provided that in all cases the safe loads do not exceed those fixed by Section 46 of this ordinance.

Beams must not be defective.

SEC. 56. *Rolled Steel and Wrought Iron Floor and Roof Beams.*—All rolled steel and wrought iron floor and roof beams used in buildings shall be of full weight, straight and free from injurious defects. Holes for tie rods shall be placed as near the thrust of the arch as practicable. The distance between tie rods in floors shall not exceed eight feet, and shall not exceed eight times the depth of floor beams twelve inches and under. Channels or other shapes, where used as skewbacks, shall have a sufficient resisting moment to take up the thrust of the arch. Bearing plates of stone or metal shall be used to reduce the pressure on the wall to the working stress.

Tie rods.

Beams resting on girders shall be rivited.

Beams resting on girders shall be securely riveted or bolted to the same; where joined on a girder, tie straps of one-half inch net sectional area shall be used, with rivets or bolts to correspond. Anchors shall be provided at the ends of all such beams bearing on the walls.

Steel work shall be connected with the walls.

SEC. 57. *Framing and Connecting.*—Structural Work. All iron or steel trimmer beams, headers, and tail beams, shall be suitably framed and connected together, and the iron or steel girders, columns, beams, trusses and all other iron work of all floors and roofs shall be strapped, bolted, anchored and connected together and to the walls.

Beams connected by angles.

All beams framed into and supported by other beams or girders shall be connected thereto by angles or knees of a

proper size and thickness, and have sufficient bolts or rivets in both legs of each connecting angle to transmit the entire load coming on the beam to the supporting beam or girder. In no case shall the shearing value of the bolts or rivets or the bearing value of the connection angles be less than provided for in this ordinance.

SEC. 58. *Riveting of Structural Steel and Wrought Iron Work.*—The distance from centre of a rivet hole to the edge of the material shall not be less than

$\frac{5}{8}$ of an inch for $\frac{1}{2}$ inch rivets,
$\frac{7}{8}$ of an inch for $\frac{5}{8}$ inch rivets,
$1\frac{1}{8}$ of an inch for $\frac{3}{4}$ inch rivets,
$1\frac{3}{8}$ of an inch for $\frac{7}{8}$ inch rivets,
$1\frac{1}{2}$ of an inch for 1 inch rivets.

Wherever possible, however, the distance shall be equal to two diameters. All rivets, wherever practicable, shall be machine driven. The rivets in connections shall be proportioned and placed to suit the stresses. The pitch of rivets shall never be less than three diameters of the rivet, nor more than six inches. In the direction of the stress it shall not exceed sixteen times the least thickness of the outside member. At right angles to the stress it shall not exceed thirty-two times the least thickness of the outside member. All holes shall be punched accurately, so that upon assembling a cold rivet will enter the hole without straining the material by drifting. Occasional slight errors shall be corrected by reaming. The rivets shall fill the holes completely; the heads shall be hemispherical and concentric with the axis of the rivet. Gussets shall be provided wherever required, of sufficient thickness and size to accommodate the number of rivets necessary to make connection.

Machine driven rivets.

Pitch of rivets.

Assembling.

Gussets.

SEC. 59. *Bolting of Structural Steel and Wrought Iron Work.*—Where riveting is not made mandatory connections may be effected by bolts. These bolts shall be of wrought iron or mild steel, and they shall have U. S. standard thread. The threads shall be full and clean, the nut shall be truly concentric with the bolt, and the thread shall be of sufficient length to

Standard threads on bolts.

allow the nut to be screwed up tightly. When bolts go through bevel flanges, bevel washers to match shall be used so that the head and nut of bolt are parallel. When bolts are used for suspenders, the working stresses shall be reduced for wrought iron to ten thousand pounds and for steel to fourteeen thousand pounds per square inch of nut area, and the load shall be transmitted into the head or nut by strong washers distributing the pressure evenly over the entire surface of the same. Turned bolts in reamed holes shall be deemed a substitute for field rivets.

SEC. 60. *Steel and Wrought Iron Trusses.*—Trusses shall be of such design that the stresses in each member can be calculated. All trusses shall be held rigidly in position by efficient systems of lateral and sway bracing, struts being spaced so that the maximum limit of length to least radius of gyration as established in Section 47 of this ordinance is not exceeded. Any member of a truss subjected to transverse stress, in addition to direct tension or compression shall have the stresses causing such strain added to the direct stresses coming on the member, and the total stresses thus formed shall in no case exceed the working stresses stated in this ordinance.

Transverse stress.

SEC. 61. *Riveted Steel and Wrought Iron Trusses.*—For tension members, the actual net area only, after deducting rivet holes, one-eighth inch larger than the rivets, shall be considered as resisting the stress. If tension members are made of angle irons riveted through one flange only, only that flange shall be considered in proportioning areas.

Tension.

Rivets to be proportioned as prescribed in this ordinance. If the axis of two adjoining web members do not intersect within the line of the chords, sufficient area shall be added to the chord to take up the bending strain. No bolts shall be used in the connections of riveted trusses, excepting when riveting is impracticable, and then the holes shall be drilled or reamed.

Bolts.

SEC. 62. *Steel and Iron Pin-connected Trusses.*—The bending stresses on pins shall be limited to twenty thousand pounds for steel and fifteen thousand pounds for iron. All

compression members in pin-connected trusses shall be proportioned, using seventy-five per cent. of the permissible working stress for columns. The heads of all eye-bars shall be made by upsetting or forging. No weld will be allowed in the body of the bar. Steel eye-bars shall be annealed. Bars shall be straight before boring. All pin-holes shall be bored true, and at right angles to the axis of the members, and must fit the pin within one-thirty-second of an inch. The distances of pin-holes from centre to centre for corresponding members shall be alike, so that, when piled upon one another, pins will pass through both ends without forcing. Eyes and screw ends shall be so proportioned that upon test to destruction—fracture will take place in the body of the member. All pins shall be accurately turned. Pin-plates shall be provided wherever necessary to reduce the stresses on pins to the working stresses prescribed in Section 47 of this ordinance. These pin-plates shall be connected to the members by rivets of sufficient size and number to transmit the stresses without exceeding working stresses. All rivets in members of pin connected trusses shall be machine driven. All rivets in pin-plates which are necessary to transmit stress shall be also machine driven. The main connection of members shall be made by pins. Other connection may be made by bolts. If there is a combination of riveted and pin connected members in one truss, these members shall comply with the requirements of pin connected trusses, but the riveting shall comply with the requirements of Section 58 of this ordinance.

Compression.

Annealed bars.

Eyes and screw ends.

Main connections shall be made by pins.

SEC. 63. *Iron or Other Metal Fronts.*—All cast iron or metal fronts shall be backed up or filled in with masonry of the thickness provided for in Sections 14 and 22 of this ordinance.

SEC. 64. *Painting of Structural Metal Work.*—All structural metal work shall be cleaned of all scale, dirt and rust, and be thoroughly coated with one coat of paint. Cast iron columns shall not be painted until after inspection by the Building Inspector. Where surfaces of rivet work come in contact they shall be painted before assembling. After erection all work shall be painted at least one additional coat. All iron or steel used under water shall be inclosed with concrete.

Painting of structural metal work.

CLASSIFICATION OF BUILDINGS.

Classification of buildings.

SEC. 65. All buildings hereafter erected or altered in the City of Wilmington, shall be classified as follows:

First class.

Buildings of the first class shall include all buildings in which all the walls, floors, columns, girders, beams, stairways, elevator enclosures, partitions and roofs are of brick, terra cotta, stone, concrete, steel or iron.

Second class.

Buildings of the second class shall include all buildings the walls of which are as hereinbefore specified for buildings of the first class, but in which the floors, columns, beams and girders are of construction known as "slow burning construction," in which all columns and girders shall be of wood, and in which no column shall be of less dimensions than sixty-four square inches, and no girder or floor beam less than six inches in its least dimension. The flooring to be of plank not less than two and three-quarters inches thick, when dressed, and the roof of plank not less than one and three-quarters inch thick, when dressed; *provided*, that in such buildings, iron or steel may be used for beams, columns or girders, if the same be protected with fireproof materials, as hereinafter set forth for buildings of the first class.

Third class.

Buildings of the third class shall include all buildings of the walls of which are as hereinbefore specified for buildings of the first class, but which in their interior construction are not in accordance with the requirements as hereinbefore set forth buildings of the first and second classes, or the floors of which may be ordinary house or joist construction.

Fourth class.

Buildings of the fourth class shall include all buildings other than those of character specified for first, second and third class construction.

What buildings shall be of first class.

SEC. 66. *Buildings Which Shall Be of the First Class.*— Any building hereafter erected or altered, to be used as a hospital, asylum, or institution for the care or treatment of persons, the height of which exceeds two stories, and every building hereafter erected or altered to be used as an apartment

house, tenement house, flat house, lodging house, hotel, or police station, the height of which exceeds four stories, shall be a building of the first class; and no building of any kind, except as hereafter provided, shall be erected or raised to a height exceeding sixty-five feet, except the same be a building of the first or second class; and no building shall be erected or raised to a height exceeding eighty-five feet except the same be a building of the first class; and all buildings of a height of six stories shall be a building of the first class.

Fireproof walls and partitions.

All buildings of the first class hereafter erected or altered, to be used for warehouse, store or factory purposes, shall be so divided by fireproof walls or partitions on every floor, except as hereinafter provided, that no space on any floor, not so divided, shall exceed twenty-five thousand square feet; and no existing wall or partition in any such buildings, shall be removed so as to leave a space, not so divided, of more than twenty-five thousand square feet. Such walls or partitions shall extend from the fireproof construction of the floors to the fireproof beam filling of ceilings. The openings or doorways in any such walls or partitions shall not exceed three in number for each floor, for each such wall or partition, and no such opening shall exceed ten feet in width. Each opening must be provided with two sets of standard fire doors, separated by the thickness of the wall or partition, said doors to be constructed and hung as provided elsewhere in this ordinance. All of the said openings through partitions of fireproof material shall have metal frames or studs, securely fastened to floor and ceiling, and such metal studs shall be covered with such fire-resisting materials as shall be approved by the Building Inspector. No wood for framing or fastening shall be used for such openings. *Provided, however,* that the space or spaces of the first or grade floor of any such buildings may exceed twenty-five thousand square feet, when the entire building is under the protection of an approved system of automatic sprinklers, so long as such system shall be kept and maintained in complete working order. If such system shall not be maintained and kept in such order, it shall be the duty of the Building Inspector to give written notice to

Openings or doorways.

Wood not used.

the tenants or owners, served upon the premises, of said fact, and within sixty days thereafter the division by fireproof walls or partitions, as above provided, shall be made, and thereafter maintained.

Further requirements of buildings of first class.

No building shall be deemed a building of the first class unless the enclosing or division walls are wholly or in part supported on iron or steel beams, girders and columns; such beams, girders and columns shall be protected against the external changes of the atmosphere and against fire by a covering of brick, terra cotta, fire clay, tile or other approved fireproofing, completely enveloping said structural members of iron or steel. Said fire proofing around outside columns and beams, if of brick, shall not be less than eight inches; if of hollow tile, shall not be less than six inches thick, and there shall be at least two sets of air spaces between the iron and steel members and the outside of the hollow tile covering. In all cases the brick or hollow tile shall be bedded in cement mortar close up to the iron or steel members, and all joints shall be made full and solid. No building shall be deemed a fireproof building unless, in addition to the above required covering of the iron and steel members, all the interior columns, beams and girders be enveloped in such fire-resisting materials as shall be approved by the Building Inspector. The filling between the individual floor beams and girders shall be one of the fireproof systems in use, as approved by the Building Inspector, and must in every case have stood the test of three times the load for which the floor is designed, without the sign of cracking. No wood or other inflammable material shall be used in any part of any such building except the doors and windows and their frames, the trims, the casings, the interior finish, when filled at the back with fireproof materials; and the floor boards and sleepers, directly under the spaces between and under sleepers must be filled up and leveled off at the top of the said sleepers with concrete or other incombustible material. All interior columns, and the lower flanges of all girders of iron or steel, shall be protected with at least three inches of brick, terra cotta, concrete, or other fire-resisting materials, as shall be approved by the Building Inspector. The

Brick or hollow tile.

web of all girders, and the flanges and web of all beams, to be protected by not less than two inches of terra cotta, brick, concrete or other fireproof material; but the extreme outer edge of lugs, brackets, and similar supporting metal may project within one inch of the surface of the fireproofing. Where the bases of iron or steel columns are independent, the said bases shall be either cast steel, thoroughly annealed or built-steel bolsters. Built sections of girders or columns, in which all parts are not accessible after erection, shall be filled with concrete, in the proportion of one part of Portland cement to three parts of sand and five parts of stone, to pass a three-fourths of an inch mesh. The maximum span for arches of brick, terra cotta, concrete, or other patent floors, shall not exceed eight feet; but nothing herein contained shall prohibit the use of reinforced concrete or heterogeneous systems, provided the depth of the floor beams or girders is three-fifths of an inch per foot of span, and that a test for strength, and fire and water resistance, satisfactory to the Building Inspector, shall be given for said reinforced or heterogeneous system. No arch in any floor system shall have a rise of less than one and one-quarter inch per foot of span.

Maximum space for arches.

Rise of arches.

In buildings of the first class, all pipes, conduits, mains, wiring, and conveyances for conducting heat, light or water, shall be encased in separate fireproof ducts, and shall not be enclosed in the fireproofing surrounding any column, girder or beam of steel or iron.

Conduits, wiring, &c.

Provided, also, that this section shall not apply to one-story buildings, used only for working in non-combustible materials, and that nothing contained in this section shall prevent the erection of grain elevators, church spires, towers for observation purposes, and structures for similar uses, all of which structures shall be constructed in such manner and under such conditions as may be prescribed by the Building Inspector.

Not apply to one-story buildings.

SEC. 67. Buildings of the second class in which any floor area between exterior walls exceeds fifteen thousand square feet, and buildings of the third class in which any floor area

Buildings of the second class.

between the exterior walls shall exceed five thousand square feet, shall be so divided by walls of brick, stone, concrete, or such other fire-resisting material as shall be approved by the Building Inspector that no space inside such building shall exceed fifteen thousand or five thousand square feet, respectively, as hereinbefore set forth; the said walls to be of the thickness as now required by law, and shall extend through, and at least three feet above the roof. No existing walls in any buildings of the second or third class shall be removed, so as to leave a space inside any building which shall exceed the areas hereinbefore set forth for each class.

Walls.

Provided, however, that in buildings of the third class, the floor area may be seventy-five hundred square feet, if the floors and roof be made of plank not less than one and three-quarters inch thick, when dressed.

Openings.

Openings may be made in such division walls, of the size, number and character as provided in Section 66, for building of the first class, if protected by standard fire doors as provided in that section.

Not apply to private dwellings or one-story buildings.

Provided further, that this section shall not apply to private dwellings, nor to one-story buildings used only for working in non-combustible materials.

In buildings other than buildings of the first class, skeleton wall construction shall not be permitted.

Party walls.

All party walls in buildings of the first and second and third classes, except dwellings and buildings of similar light construction, shall extend through, and at least three feet above the roof.

Stairways in warehouses shall be enclosed.

SEC. 68. All stairways hereafter placed in any buildings of the first, second or third classes, used for warehouse, store or factory purposes, and in which any floor area between exterior walls exceeds five thousand square feet, and all elevators, hoistways, hatchways, well holes, chutes, dumb waiters and interior light or vent shafts, or shafts of any description, here-

after placed in any building, except such fireproof buildings as are occupied for office purposes only, shall be enclosed, between floors and ceilings of each story, in suitable walls of brick, or with a suitable framework of iron and burnt clay filling, or of such other fireproof material and form of construction as may be approved by the Building Inspector, except that the enclosure walls, required by this section in any non-fireproof building, used as warehouses or factories, shall be of brick. All such walls or construction where elevator, stairs, hoist, hatchway, chute, dumb waiter, light or vent shaft, or other shaft, extends to the top floor, shall extend at least three feet above the roof. If the enclosure walls are of brick, any of the above shafts may be in the same enclosure, provided the stairways are constructed of non-combustible material. All interior openings in the enclosure walls of elevators, stairways, hoistways, hatchways, chutes and dumb waiters, shall be provided with fireproof doors, made solid for their full height, and set in fireproof frames and fittings. Lights of wire-glass, in metal frames, may be placed in such doors and in the enclosure walls, but no one pane of wire-glass shall exceed in area two hundred and fifty square inches, between muntins.

Shall extend above the roof.

Interior openings shall be provided with fireproof coverings.

All exterior openings in the enclosure walls of stairways, elevators, or dumb waiters, and all openings in the walls of the interior light or vent shafts, shall be provided with approved wire-glass windows set in approved metal frames, but no one pane of wire-glass in such windows shall be larger than twenty-four inches by thirty inches between muntins. Automatic closing trap doors, tin-lined on the under side, at each floor, when approved by the Building Inspector may be substituted for the above named enclosure walls for hoistways (without cars), hatchways and chutes.

Exterior openings.

Automatic trap doors.

The roofs over the enclosed elevators, stairways, hoistways, hatchways, chutes and dumb waiters shall be made of fireproof materials, with skylight or sidelights above the roof, at least three-quarters the area of the shaft, made of glass set in iron frames. When the shafts do not extend to the ground, the bottom floor of the shaft shall be constructed of fireproof

Fireproof roofs.

material. In all buildings of the first, second or third class, in which any floor area between the exterior walls is five thousand square feet or less, the stairways shall be of such number, and protected in such manner, as may be approved by the Building Inspector.

Exception.

Provided, however, that nothing in this section shall apply to any building not over two stories in height, nor to private dwellings and buildings of similar light construction, stores with private dwelling occupancy entirely above the grade floor, and stables.

SEC. 69. *Standard Fire Doors and Fire Shutters.*—Whenever standard fire doors or fire shutters are referred to in this ordinance they shall be constructed as follows, namely: Not less than two thicknesses of one-inch boards, laid diagonally, and securely fastened together by wrought iron clinched nails and covered with I. C. tin plates, not exceeding fourteen by twenty inches, joints to be locked one-half inch and nailed under seams, and corners to have mitre fold (not mitre joint). Doors and shutters to overlap sides and top of opening four inches, and to close tight against smooth masonry (not wood trimmed) and sill. Sills to be of non-combustible material, resting on and built into brick or stone wall, and extending under and beyond outer surface of doors. Doors and shutters to be hung on wrought iron wall-eyes, or to slide on track of heavy flat-rolled steel. All hardware, such as hinges, hangers, wall-eyes, track bolts, binders, handles, latches, catches, etc., to be of heavy wrought iron, built in wall or bolted through wall or door or shutter. All fire doors and shutters shall be closed at night, and whenever the building is not in actual use; at least one in three shutters, on each floor above the first, being so arranged that it can be opened from both outside and inside.

Walls shall not be furred with wood.

SEC. 70. In all buildings hereafter erected or altered to be used for warehouse, store, or factory purposes, the walls shall not be furred with wood; nor shall any partition, extending from floor to ceiling be constructed with wooden studs. In

non-fireproof buildings, to be used for warehouse, store or factory purposes, such partitions shall be constructed of some non-combustible material to be approved by the Building Inspector, or of plank not less than three inches thick, with tongues, and dressed on all sides. If such walls or partitions are to be plastered, the plaster shall be applied directly to the masonry or partition, or over metal lath, without air spaces behind.

In all buildings hereafter erected or altered to be used for warehouse, store or factory purposes, the ceilings shall not be furred with wood, nor shall any wooden or combustible material be applied to form a ceiling. If plaster is applied it shall be applied over metal lath.

Ceilings in warehouses, &c., shall not be furred with combustible material.

SEC. 71. *Tower Fire Escapes.* (*a*)—All buildings of the first, second and third classes, hereafter erected or altered to be used as schoolhouses, tenement houses, apartment houses, flat houses, stores, offices, manufactories, workshops, mills or places of assembly or resort, shall have in addition to the main stairs or other means of egress, a tower fire escape, or escapes, as set forth in the following schedule:

(*a*) As to fire escapes, see Revised Code 1893, p. 929.

BUILDINGS OF THE FIRST CLASS.

One Tower Fire Escape		Two Tower Fire Escape
Number of stories in height	Maximum area per floor in square feet	Area per floor square feet
3 or 4,	20,000	Over 20,000 to 25,000
5,	15,000	Over 15,000 to 25,000
6,	12,000	Over 12,000 to 25,000
7,	10,000	Over 10,000 to 22,000
8,	9,000	Over 9,000 to 20,000
9,	8,000	Over 8,000 to 18,000
10,	7,500	Over 7,500 to 17,000
11,	7,000	Over 7,000 to 16,000
12,	6,500	Over 6,500 to 15,000

BUILDINGS OF THE SECOND AND THIRD CLASSES.

One Tower Fire Escape		Two Tower Fire Escape
Number of stories in height	Maximum area per floor in square feet	Area per floor square feet
3,	10,000	Over 10,000 to 15,000
4,	6,000	Over 6,000 to 12,000
5,	4,500	Over 4,500 to 10,000
6,	3,500	Over 3,500 to 8,000

Fire escapes.

If the total floor space above the second floor exceeds the number of square feet as set forth in the above schedule, there may be required, in addition to the above mentioned number of fire escapes, as many additional tower fire escapes as the Building Inspector may determine.

The location and construction of all stairways and tower fire escapes shall be determined and approved by the Building Inspector. (*a*)

(*a*) The above refers to "tower fire escapes."
See Sec. 2 of Rev. Code of 1893, p. 929, as to the duties of the Chief Engineer of the Fire Department as to fire escapes.

Not to apply to office buildings of first class, &c.

Provided, that this section does not apply to office buildings of the first class, nor to buildings less than three stories high, and buildings of a greater number of stories in height than two, in which the stories above the second story are not occupied by persons. *Provided*, that in store buildings, in which the tower fire escapes in the first story would interfere with the show windows, the said tower may stop at the second floor level, and that an exterior, continuous balcony be provided at the second floor level, with drop ladders.

Safe means of egress from basement.

All buildings used as stores, department stores, or buildings of any kind in which people assemble in the basement of said stores or buildings, there shall be provided safe means of egress from the basement, leading directly to the street, the proper location of such places of egress to be determined by the Building Inspector.

Definition.

SEC. 72. In this ordinance the term "height" of a building means the vertical distance of the highest point of the

roof, in the case of flat roofs; and for high pitched roofs, the average of the height of the gable above the mean grade of the curbs of all the streets, or the mean grade of the natural ground adjoining the building, if the said grade or ground is not below the grade of the curb.

SEC. 73. *School Buildings.*—All buildings hereafter erected or altered for school purposes shall be constructed in accordance with the provisions of this ordinance. School buildings must conform to requirements.

All such buildings having a seating capacity of less than four hundred, or which is not over two stories and basement in height may be a building of the third class. Seating capacity.

All such buildings having a seating capacity of four hundred and less than six hundred, or which is not over three stories and basement in height shall be a building of the first or second class.

All such buildings having a greater seating capacity than six hundred, and which are more than three stories and basement in height shall be a building of the first class.

Stories, Height of.—No story above the basement shall be less than twelve feet in height. Height of stories.

Stairways.—The stairways in school buildings shall be in width equivalent to fifteen inches for every hundred of seating capacity in such building. No stairway shall be less than four feet wide in the clear, except where more than two stairways lead down from any one floor, in which case stairways three feet wide in the clear may be counted in the total width of stairways required where two or more stairways are used, they shall be placed at opposite ends of the building or as far apart as practicable, and all such buildings hereafter erected shall have at least two separate and distinct stairways from the ground floor to the top floor. All stairways shall have hand rails on each side thereof. In all school buildings hereafter erected more than two stories and basement in height, the stairways and their enclosing walls shall be of fireproof Width of stairways. Hand rails on stairways.

Width of corridors.

construction. The width of corridors, passageways, hallways and doors shall be computed in the same manner as that herein provided for stairways. *Provided, however,* that no corridor shall be anywhere less than five feet in width, and no door less than three feet in width. All doors in such building shall open outward, and all entrance and exit doors shall be unlocked at all times when the building is occupied for school purposes or open to the public.

Doors.

Width of aisles.

Aisles in auditoriums and assembly halls, or class rooms in such buildings, shall be in width equivalent to eighteen inches for every one hundred of seating capacity in such auditoriums and assembly halls, or class rooms, but no such aisle shall be less than two feet six inches in width at its narrowest part. All aisles and passageways shall be kept free from chairs, camp-stools or any other obstruction, and no person shall be allowed to stand in or occupy any such aisles or passageways during any performance, concert, lecture or any public assembly.

THEATRES AND PLACES OF PUBLIC AMUSEMENT.

Theatres or opera houses.

SEC. 74. Every theatre or opera house or other buildings used for theatrical or operatic purposes, or for public entertainments of any kind where stage scenery and apparatus are employed, hereafter erected or altered, shall be built to comply with the requirements of this section. No building which at the passage of this ordinance is not in actual use for theatrical or operatic purposes, and no building hereafter erected not in conformity with the requirements of this section shall be used for theatrical or operatic purposes, or for public entertainments of any kind where stage scenery and apparatus are employed until the same shall have been made to conform to the requirements of this section. And no building hereinbefore described shall be opened to the public for theatrical or operatic purposes or for public entertainment of any kind where stage scenery is employed until the Building Inspector shall have approved the same as conforming to the requirements of this section.

Every such building shall have at least one front on the street, which front shall be as wide as the widest part of the auditorium, and in such front there shall be suitable means of entrance and exit for the audience. In addition to the aforesaid entrance and exits on the street there shall be reserved for service in case of an emergency, an open court or space on the side not bordering on the street, where said building is located on a corner lot, and on both sides of said building where there is but one frontage on the street, the width of such open court or courts shall not be less than seven feet where the seating capacity is not over one thousand people, above one thousand people, and not more than eighteen hundred, eight feet in width, above eighteen hundred, ten feet in width. Said open court or courts shall begin on a line with or near the proscenium wall and shall extend the length of the auditorium and through such buildings as may be erected on the street side of the auditorium, with continuous walls of brick or fireproof materials on each side, the entire length of said corridors, and the ceilings and floors shall be fireproof. Said corridor or corridors shall not be reduced in width, except by the thickness of the outer walls and there shall be no projection in same, the outer opening, if provided with doors or gates, the same shall open towards the street. During the performance, the doors or gates in the corridors shall be kept open by proper fastenings. The said open courts and corridors shall not be used for storage purposes, or for any purpose whatever except for exit and entrance from and to the auditorium and stage and must be kept clear during performance.

Width of buildings.

Exits.

During performances doors must be kept open.

The level of said corridor at the front entrance to the building shall not be greater than one riser of seven inches, and the entrance of the main front of the building shall not be on a higher level from the sidewalk than four steps of seven inch risers each. To overcome any difference of level existing between the exits from the parquet into courts and the level of the said corridors, gradients shall be employed of not over one foot in ten feet with no perpendicular rise. From the auditorium opening into the said open courts or on the side street there shall not be less than two exits on each side in each tier.

Corridor.

Two exits on each tier.

from and including the parquet, and each and every gallery. Each exit shall be at least five feet in width in the clear and provided with doors of iron or wood; if wood the doors shall be covered with tin or some fireproof material. All of said doors shall open outwardly, and must be fastened with movable bolts, the bolts to be kept drawn during performance.

Width of exits.

Doors must open outwards.

There shall be balconies not less than four feet in width in said open courts at each level or tier above the parquet on each side of the auditorium of sufficient length to embrace the two exits, and from said balconies there shall be staircase extending to the ground level, with a rise of not more than eight inches and not more than nine inches tread. The staircases from the upper balcony to the next below shall not be less than thirty inches in width in the clear, and from the first balcony to the ground three feet in width in the clear, where the seating capacity of the auditorium is one thousand people or less, three feet and six inches in the clear; where above one thousand and not more than eighteen hundred people, four feet in the clear; where above eighteen hundred people and not more than twenty-five hundred people, not less than four feet six inches in the clear.

Balconies.

Staircases.

All the before mentioned balconies and staircases shall be constructed of iron throughout, and they shall be of ample strength to sustain the load they are designed to carry, and they shall be covered with a metal hood or awning and to be subject to the approval of the Building Inspector. Where one side of the building borders on a street, there shall be balconies and staircases of like capacity and kind as before mentioned and carried to the ground. No portion of any building hereafter erected or altered to be used or intended to be used for theatrical or other purposes, as in this section specified, shall be used or occupied as a hotel, boarding or lodging house, factory, workshop or manufactory, or for storage purposes, except as may be hereafter specially provided for. Said restriction applies not only to that portion of the building which contains the auditorium and the stage, but applies to the entire structure in connection therewith. Interior walls built of fireproof materials shall separate the auditorium from the en-

Balconies and staircases shall be of iron.

Theatres shall not be occupied in part as hotel, &c.

trance vestibule and from any room or rooms over same, also from any lobbies, corridors, refreshment or other rooms. All staircases for the use of the audience shall be enclosed with brick walls or of fireproof materials approved by the Building Inspector, in the stories through which they pass, and the opening to said staircases from each tier shall be full width of said staircase. A fire wall, built of brick, shall separate the auditorium from the stage and the same shall extend at least three feet above the stage roof, or the auditorium roof, if the latter be the higher, and shall be coped with stone. Above the proscenium opening there shall be an iron girder covered with fireproof material to protect it from the heat. There shall also be constructed a relieving arch over the same, the intervening space being filled in with hard-burned brick or other fireproof materials of the full thickness of the proscenium wall. The moulded frame around the proscenium opening shall be formed entirely of fireproof materials; if metal be used the metal shall be filled in solid with non-combustible material and securely anchored to the wall with iron. The proscenium opening shall be provided with a fireproof curtain of asbestos, sliding in iron grooves securely fastened to the brick wall and extending into such grooves not less than six inches. Said fireproof curtain shall be lowered at the close of each performance and be opened by approved machinery for that purpose. There shall be no opening through the proscenium wall except the curtain opening, and not more than two others which shall be located at or below the level of the stage. These latter openings shall not exceed twenty superficial feet each, which shall have doors of iron or wood; if of wood the door shall be lined with tin and securely hung to rabetted iron frames or rabbets in the brick wall. They shall be hung so as to be opened from either side at all times, direct access to these floors shall be provided on both sides and the same shall always be kept free and clear of all incumbrances. Iron steps shall be provided, securely fixed to the wall to overcome any difference of level existing between the stage and auditorium. The roof over the auditorium and the entire main floor of the auditorium and vestibules, also the entire floor of the second story of the front superstructure over the entrance lobby and corridors, and all

Staircases shall be fireproofed.

Fireproof wall.

Relieving arch.

Fireproof moulding.

Fireproof curtain of asbestos.

Two openings through proscenium wall.

Iron steps.

Fireproof construction. galleries in the auditorium shall be constructed of iron or steel or other fireproof materials, not excluding the use of wooden floor boards and necessary sleepers to fasten the same to, but such sleepers shall not mean timbers of support. The fronts of each gallery shall be formed of fireproof materials excepting the capping, which may be made of wood. The ceiling under each gallery shall be entirely formed of fireproof materials. The ceiling of the auditorium shall be formed of fireproof materials. All lathing wherever used shall be metal. The partitions in that portion of the building which contains the auditorium, the entrance vestibule and every room and passage devoted to the use of the audience shall be constructed of fireproof materials including the stripping of outside walls. None of the walls or ceilings shall be covered with sheathing, canvas or any combustible material, but this shall not exclude the use of wood wainscoting to a height not to exceed four feet, which shall be filled in solid between the wainscoting and the wall with fireproof material. The walls separating the actors' dressing rooms from the stage and the partitions dividing the dressing rooms, together with the partitions of every passageway from the same to the stage, and all other partitions on or about the stage shall be constructed of fireproof material approved by the Building Inspector. All doors in any of said partitions shall be of iron or wood constructed as hereinbefore described. All seats in the auditorium, excepting those contained in the boxes, shall be firmly secured to the floor, and no seat in the auditorium shall have more than six seats intervening between it and an aisle on either side, and no stool or seat shall be placed in any aisle. All platforms in galleries formed to receive the seats shall not be more than twenty inches in height of riser nor less than thirty inches in width of platform. All aisles on the respective floors in the auditorium having seats on both sides of same shall be not less than three feet wide where they begin, and shall be increased in width towards the exits in the ratio of one and one-half inches to five running feet. Aisles having seats on one side only shall not be less than twenty-seven inches wide at their beginning, and increased in width the same as aisles having seats on both sides.

Metal laths.

Partition walls—fireproof.

Seats.

Aisles.

Gradients or inclined planes shall be employed instead of steps where possible to overcome slight difference of level, in or between aisles, corridors and passages. Every theatre accommodating three hundred persons shall have at least two exits, when accommodating five hundred persons at least three exits shall be provided, three exits not referring to or including the exits to the open courts at the sides of the theatres. Doorways of exits or entrances for the use of the public shall not be less than five feet wide, and for every additional one hundred in excess of five hundred persons, twenty inches additional exit width must be allowed. All doors of exit or entrance shall be hung to open outwardly, and no such doors shall be locked during any performance, or when the building is open to the public. Distinct and separate places of entrance and exit shall be provided for each gallery above the first. A common place of exit and entrance may serve for the auditorium and the first gallery, provided its capacity be equal to the aggregate capacity of the outlets from the main floor and the said gallery. No passage leading to any stairway communicating with any entrance or exit shall be less in width than four feet in any part thereof. All stairways within the building shall be constructed of fireproof material throughout.

Gradients in place of steps.

Doorways.

Doors hung to open outward.

Stairways shall be fireproof.

Stairways serving for the exit of fifty people, must, if straight, be at least four feet wide between railings or between walls, and if curved or winding, five feet, and for every fifty people to be accommodated, six inches must be added to their width. In no case shall the risers of any stairs exceed seven inches in height, nor shall the treds, exclusive of the nosings, be less than nine and one-half inches in straight stairs. In circular stairs the width of tread at the narrowest end shall not be less than seven inches. When the seating capacity is for more than one thousand people, there shall be at least two independent staircases with direct exterior outlets provided for each gallery and the same shall be located on opposite sides of said gallery. Where the seating capacity is for one thousand people or less, two direct lines of staircases only shall be required, located on opposite sides of the galleries and in both cases shall extend from the sidewalk level to the upper gallery

Width of stairways.

Independent staircases provided.

with outlets for each gallery to each of said stairways. At least two independent staircases with exterior outlets shall also be provided for the service of the stage and shall be located on opposite sides of same. All inside stairways leading to the upper galleries of the auditorium shall be enclosed on both sides with walls of fireproof material. In stairs when two side flights connect with one main flight, no winders shall be introduced, and the width of the main flight shall be at least equal to the aggregate width of the side flights. All enclosed staircases shall have on both sides strong hand rails firmly secured to the wall about three inches therefrom and three feet above the stairs.

Inside stairway.

Steam boilers located outside.

Every steam boiler which may be required for heating or other purposes shall be located outside of the building, and the space allotted to the same shall be enclosed by walls of masonry on all sides and the roof and ceiling of such building shall be constructed of fireproof material. All doorways in said walls shall be of iron. No floor register for heating shall be permitted. No coil or radiator shall be placed in any aisle or passageway, used as an exit where it forms an obstruction, but all said coils and radiators shall be placed in recesses formed in the wall or partition to receive the same. All supply, return or exhaust pipes shall be properly encased and protected where passing through floors or near woodwork. Every portion of the building devoted to the uses or accommodation of the public, also all outlets leading to the streets and including the open courts and corridors shall be well and properly lighted during every performance and the same shall remain lighted until the entire audience has left the premises. Every exit shall have over the same on the inside the word "Exit" painted in legible letter not less than eight inches high. At least two oil lamps on each side of the auditorium in each tier shall be provided on fixed bracket not less than seven feet above the floor. Said lamps shall be filled with whale or lard oil and shall be kept lighted during each performance, or in place of said lamps, candles shall be provided. All gas or electric lights in the halls, corridors, lobby or in any other part of the said building used by the audience except the auditorium

Doorways of iron.

Sufficient lights.

Exit.

must be controlled only in that particular place. Gas mains supplying the building shall have independent connections for the auditorium and the stage, and provisions shall be made for shutting off the gas from the outside of the building. When interior gas lights are not lighted by electricity, other suitable appliances shall be provided to be approved by the Building Inspector. Gas mains.

All suspended or bracket lights surrounded by glass in the auditorium, or in any part of the building devoted to the public, shall be provided with proper wire netting underneath. No gas or electric lights shall be inserted in the walls, woodwork, ceiling or in any part of the building unless protected by fireproof materials. All lights in passages and corridors in said buildings, and wherever deemed necessary by the Building Inspector shall be protected by proper wire net work. The footlights in addition to the wire net work, shall be protected by a strong wire guard, not less than two feet distant from said footlights and the trough containing said footlights shall be formed of, and surrounded by, fireproof materials. All stage lights shall be incandescent electric lights where the current can be obtained, and shall be constructed according to the best known methods, and subject to the approval of the Building Inspector. All ducts or shafts used for conducting heated air from the man chandelier, or from any other light or lights, shall be constructed of metal, and made double with air space between. All stage lights shall have strong metal wire guards or screens not less than ten inches in diameter, so constructed that any material in contact therewith shall be out of reach of the flames of said stage lights, and must be soldered to the fixture in all cases. Stand pipes of two and one-half inches in diameter shall be provided with hose attachments on every floor and gallery as follows, viz: Wire netting on suspended lights. Air ducts shall be double. Stage lights shall be protected. Stand pipes.

One on each side of the auditorium in each tier, also one on each side of the stage in each tier, and at least one in the property room and one in the carpenter shop, if the same be contiguous to the building. All such stand pipes shall be kept clear from obstruction. Said stand pipes shall be separate and distinct, receiving their supply of water direct from the steam Obstructions.

pumps, and shall be fitted with the regulation couplings of the fire department, and shall be kept constantly filled with water by means of any automatic steam pump or pumps of sufficient capacity to supply all the lines of hose when operated simultaneously and said pump or pumps shall be supplied from the street main, and be ready for use at all times during a performance in said buildings. A proper and sufficient quantity of two and one-half inch hose fitted with the regulation couplings of the fire department and with nozzles attached thereto and with hose spanners at each outlet shall always be kept attached to each hose attachment. There shall also be kept on the stage for immediate use at least four casks full of water and two buckets to each cask. Said casks and buckets shall be painted red. There shall also be provided, hand pumps or other portable fire extinguishing apparatus and at least four axes and two twenty-five feet hooks, two fifteen feet hooks, and two ten feet hooks on each tier of floor of the stage. There shall be provided metal skylights in the roof over the stage of an area or combined area of at least one-eighth of the area of said stage, fitted up with sliding sash and glazed with double thick sheet glass not exceeding one-eighth of an inch thick, and each pane thereof measuring not less than three hundred square inches, and the whole of said skylight shall be constructed as to open immediately on the cutting or burning of a hempen cord, or some other simple device to be approved by the Building Inspector. There shall be provided immediately under said skylight a wire netting to catch any falling glass from the skylight, or fire resisting wire glass may be used in the above mentioned skylights.

Hose.

Casks and buckets.

Metal skylights.

Wire netting under skylight.

TENEMENTS AND APARTMENT HOUSES.

Tenement and apartment houses.

SEC. 75. All tenements and apartment houses hereafter erected or altered or constructed more than four stories and basement in height shall be a building of the first class. *Provided, however,* that this section shall not preclude the use of wooden floor boards or sleepers to fasten the same, which however shall be imbedded to their top surface with incombustible material.

Stair halls inclosed in masonry, requirements, exceptions. Requirements in non-fireproof houses.
In every non-fireproof apartment or tenement house hereafter erected or altered all stair halls shall be inclosed on all sides with the walls of solid masonry. There shall be no movable transoms or sash openings from any such stair hall to any other part of the building. All glass in such stair halls shall be good quality wire glass, except where same opens into a street, alley, court, or yard. This section shall not apply to apartment or tenement houses three stories in height with only one apartment on each floor.

Entrance Halls.—Solid Masonry—Exceptions—Ceilings. Size.
Every main entrance halls in a tenement or apartment houses shall be at least three feet six inches wide in the clear from the entrance up to and including the stair enclosure and beyond this point at least three feet wide in the clear. In every non-fireproof apartment or tenement hereafter erected or altered, except where there is only one apartment on each floor such Floors.
entrance hall shall be enclosed with solid masonry, and with floors constructed of incombustible material, and shall comply with all the conditions of the preceding section of this ordinance as to the construction of stair halls. If such main entrance hall is the only entrance to more than one flight of stairs, the said hall be increased in width at least one foot for each additional flight of stairs.

Apartments Divided by Masonry.—There shall be a wall Masonry division between every five room apartment.
of solid masonry extending from the ground to the roof between each set of apartments, *provided, however*, that where apartments consist of only one room or a suite of two rooms, then it shall only be necessary to build the above mentioned wall between every five rooms. The wall between apartments Walls above the first floor may set over toward the center.
above the first story extending from the main stair hall to the outer wall of the building may jog or set over to some point toward the centre of the building to provide or allow for an even distribution of space of the rooms adjacent to the same.

Whenever the walls inclosing the entrance or stair hall of Walls supporting beams, 13 inches.
any apartment or tenement house hereafter erected or altered support beams or girders carrying a brick wall, the supporting

walls shall be not less than thirteen inches laid in cement mortar.

One stairway to the roof.

At least one flight of hall stairs in each tenement or apartment house shall extend to the roof, and there be enclosed in a bulkhead. The bulkhead door shall not at any time be locked with a key, but it may be fastened on the inside with a movable bolt or hooks. Every non-fireproof tenement or apartment house hereafter erected or altered with more than one apartment on each floor above the first shall have at least two flights of stairs, which shall extend from the entrance floor to the top story. Such stairs shall be constructed with a rise of not more than eight inches and with treads not less than nine inches wide. Where winders are used all treads at a point eighteen inches from the wall strings shall be at least ten inches wide. All stairs and the public halls in every such building shall be at least three feet wide in the clear, and every apartment shall be directly accessible from both flights of stairs. Each stairway shall have an entrance on the entrance floor from a street or alley or open passageway or from an outer court or from an inner court which connects directly with the street or alley or open passageway.

Non-fireproof apartments, two stairways.

Winders.

Cellar and basement ceilings.

Cellar Ceilings.—In all non-fireproof tenement or apartment houses hereafter erected, the cellar and basement ceilings shall be lathed with metal lath and plastered.

Fireproof elevator shafts.

Shafts.—All elevator or dumb waiter shafts hereafter constructed in any tenement or apartment house shall be fireproof throughout, with fireproof self-closing doors at all openings at each story. But nothing in this section shall be so construed as to require enclosure about elevators or dumb waiters in the well hole of stairs, where the stairs themselves are enclosed in brick or other incombustible walls, and are entirely constructed of fireproof materials as hereinbefore provided.

Open spaces adjoining.

Every tenement or apartment house hereafter erected or altered shall have attached to it in the rear or at the side an open space equal in area to at least twenty per centum of the entire area of the lot upon which said tenement or apartment

house is erected, which open space shall be unobstructed by any overhanging structure, except fire escapes required by law, unless, however, such tenement or apartment house shall be erected upon a corner of two streets, neither of which is less than twenty feet in width, in which case said tenement or apartment house shall have an open space attached to it in the rear or at the side next the adjoining lot equal in area to at least ten per centum of the entire area of the lot upon which said building is erected, which open space shall be unobstructed by any overhanging structure, except fire escapes, required by law; and any such apartment or tenement house which shall be erected upon a lot bounded on three sides by streets not less than thirty feet in width may be erected to cover the entire area of said lot.

Provided, that every window opening from every room, except bath rooms and water closet compartments, shall open upon one of said streets, such open space attached to every such apartment or tenement house shall be at least eight feet in width throughout its entire length. No open space between tenement or apartment houses or between the wings of the same shall be of a less width than twelve feet. If such apartment or tenement shall be built upon a lot which is bounded upon two opposite sides by streets, then at least one end of every such open space shall abut upon one of such streets.

Space between tenement houses not less than 12 feet.

Every court or shaft which shall be built for the purpose of furnishing light or air to such buildings, shall open one side into a street or into the yard or open space, except such shafts as may be necessary for the ventilation of water closets and bath rooms.

Air shafts.

Every room in every such tenement or apartment house shall have at least one window opening upon a street or upon the open space provided in this section, and the distance from every window in every building to the wall or party line opposite to it shall be at least eight feet. The halls on each floor shall have a window or windows opening either upon a street or upon the open space, as provided for in this section, and shall have no room or other obstruction at the end unless suf-

Windows required in all rooms.

Halls.

ficient light and ventilation is otherwise provided for said halls in a manner approved by the Building Inspector.

Cubic contents of rooms.

Every habitable room in every tenement house shall be of such dimensions as to contain at least nine hundred cubic feet of air and in no case shall the height from the floor to the ceiling be less than eight feet in height, and every window shall have an opening of not less than twelve square feet, unless more than one window is provided for, but the total window space for any room shall be not less than twelve feet.

Height of ceiling.

Water closets.

In every such tenement house there shall be one water closet for every tenement or suit of rooms which has its own independent hallway, so separated that its rooms do not open into or connect with any other rooms; and in tenement houses so constructed that a tenement may consist of a single room or of two rooms, there shall be at least one water closet for every three rooms. *Provided*, that in the case of buildings existing at the date of this ordinance, which shall hereafter be altered into tenement houses, there shall be one water closet for six rooms, but not less than one for each floor. Every water closet shall be separated from every other water closet, and shall have an entrance entirely independent of the entrance to every other water closet. There shall also be an independent water supply, and at least one sink for every tenement or suits of rooms. No hydrant shall be permitted in the yard or open space provided for in this section.

Hydrants not permitted.

Ash receptables.

In every such tenement or apartment house there shall be a suitable receptacle for ashes constructed of incombustible material.

Definition.

Defining apartment and tenement houses in this ordinance. An apartment house is any building or portion thereof intended for or used as the home or residence of three or more families living independently of each other, and in which every such family shall have provided for it at least three rooms and a toilet room containing a set bath tub and a water closet.

A tenement house is any building or portion thereof intended for or used as the home or residence of three or more families living independently of each other and doing their cooking upon the premises or by more than two families upon any floor, so living and cooking, but having a common right in the halls, stairways, yards or water closets or some of them.

Reinforced concrete defined.

SEC. 76. *Reinforced Concrete Defined.*—The term "reinforced concrete" shall be understood to mean an approved concrete mixture reinforced by steel or iron of any shape, so that the steel or iron will take up all the tensional stresses and assist in the resistance to compression and shear.

Plans to be filed with Building Inspector.

Plans to be Filed.—Before a permit to erect any reinforced concrete structure is issued, complete specifications and drawings shall be filed with the Building Inspector showing all details of the construction, size and position of all reinforcing rods, stirrups, etc., and giving the compositions and proportions of the concrete.

Competent superintendent required.

Foreman or Superintendent.—The execution of the work shall be performed by workmen under the direct supervision of a competent foreman or superintendent.

Reinforced concrete accepted.

Aggregate.—Reinforced concrete construction will be accepted for fireproof buildings of the first class, if designed as hereinafter prescribed; *provided,* that the aggregate for such concrete shall be clean, broken hard stone, or clean graded gravel, together with clean siliceous sand or fine grained gravel; should the concrete be used for flooring between rolled steel beams, clean furnace clinkers entirely free of combustible matter, or suitable seasoned furnace slag may be used; when stone is used with sand or gravel it must be of a size to pass through a one inch ring, and 25 per cent. of the whole must not be more than one-half the maximum size; *and provided further,* that the minimum thickness of concrete surrounding the reinforcing members of reinforced concrete beams and girders shall be two inches on the bottom and one and one-half inches on the sides of the said beams and girders. The minimum thickness of concrete under slab rods shall be one inch.

Size of stone in concrete.

Maximum thickness of concrete.

All reinforcement in columns to have a minimum protection of two inches of concrete.

Floorings, beams, &c.

Flooring, Beams, etc.—All the requirements herein specified for the protection of steel and for fire-resisting purposes shall apply to reinforced concrete flooring between rolled steel beams, as well as to reinforced concrete beams and to entire structures in reinforced concrete.

Strength of concrete.

Any concrete structure or the floor filling in same, reinforced or otherwise, which may be erected on a permanent centering of sheet metal, or metal lathing and curved bars or a metal centering of any other form, must be strong enough to carry its load without assistance from the centering unless the concrete is so applied as to protect the centering as herein specified for metal reinforcement.

Exposed metal centering.

Exposed metal centering or exposed metal of any kind will not be considered a factor in the strength of any part of any concrete structure, and a plaster finish applied over the metal shall not be deemed sufficient protection unless applied of sufficient thickness and properly secured, as approved by the Building Inspector.

Mechanical mixing.

Mechanical Mixing.—All concrete shall be mixed in a mechanical batch mixer to be approved by the Building Inspector, except when limited quantities are required or when the condition of the work makes hand mixing preferable; hand mixing to be done only when approved by the Building Inspector. In all mixing the material shall be measured for each batch.

Hand mixing.

Method of Hand Mixing.—When hand mixing is done under the aforesaid limitations, the cement and fine gravel or coarse sand shall be first thoroughly mixed dry and then made into a mortar by gradually adding the proper amount of water. The crushed stone or gravel shall be spread out to a depth not to exceed six inches, in a tight box or upon a proper floor, and be sprinkled with water as directed; the mortar is then to be evenly spread over the crushed stone, and the whole mass

turned over a sufficient number of times, to effect the thorough mixing of the ingredients.

Forms and Centering.—All forms and centering for concrete shall be built plumb and in a substantial manner, made tight so that no part of the concrete mixture will leak out through cracks or holes, or joints, and after completion shall be thoroughly cleaned, removing shavings, chips, pieces of wood and other material, and no debris of any kind shall be permitted to remain in the forms. All forms to be properly supported and braced in a manner to safely sustain the dead load and the load that may be imposed upon them during construction. Forms and centering shall be plumb.

The reinforcing steel shall be accurately located in the forms and secured against displacement.

Concrete shall be placed immediately after mixing.

Whenever fresh concrete joins concrete that is set, or partially set, the surface of the old concrete shall be roughened, cleaned and spread with cement mortar, which mortar shall be mixed in proportions of one of cement to two of sand. Joining of old and new concrete.

Concrete shall not be mixed or deposited in freezing weather, unless precautions are taken to avoid the use of materials covered with ice or snow or that are in any other way unfit for use, and that further precautions are taken to prevent the concrete freezing after being put in place. All forms under concrete so placed to remain until all evidences of frost are absent from the concrete and the natural hardening of the concrete has proceeded to the point of safety. Not mixed in freezing weather.

Concrete laid during hot weather shall be drenched with water twice daily, Sunday included, during the first week. The broken stone, if hot and dry, must be wet before going to the mixer. Concrete laid in hot weather.

The time at which props or shores may safely be removed from under floors and roofs will vary with the condition of the weather, but in no case should they be removed in less than Removal of shores.

two weeks; *provided,* that column forms shall not be removed in less than four days; *provided, further,* that the centering from the bottom of slabs and sides of beams and girders may be removed after the concrete has set one week, provided, that the floor has obtained sufficient hardness to sustain the dead weight of the said floor and that no load or weight shall be placed on any portion of the construction where the said centers have been removed.

Proportions.

The concrete for all girders, beams, slabs and columns, shall be mixed in the proportions of one of cement, two of sand or fine gravel, and four of other aggregates as before provided. The concrete used in reinforced concrete-steel construction must be what is usually known as a "wet" mixture. When the concrete is placed in water it must be placed in a semi-dry state.

Portland cement required.

Only Portland cement shall be permitted in reinforced concrete constructed buildings. All cement shall be tested, in carload lots when so delivered or in quantities equal to same, and report filed with the Building Inspector before using it in the work. Cement failing to meet the requirements of the accelerated test will be rejected.

Tests.

Soundness, Accelerated Test.—Pats of neat cement will be allowed to harden twenty-four hours in moist air, and then be submitted to the accelerated test as follows: A pat is exposed in any convenient way in an atmosphere of steam above boiling water, in a loosely-closed vessel, for three hours, after which, before the pat cools, it is placed in the boiling water for five additional hours.

To pass the accelerated test satisfactorily, the pats shall remain firm and hard, and show no signs of cracking, distortion or disintegration.

Minimum tensile strength.

Such cements, when tested shall have a minimum tensile strength as follows: Neat cement shall, after one day in moist air, develop a tensile strength of at least 150 pounds per square inch; and after one day in air and six days in water

shall develop a tensile strength of at least 500 pounds per square inch; and after one day in air and twenty-seven days in water shall develop a tensile strength of at least 600 pounds per square inch. Cement and sand tests composed of one part of cement and three parts of crushed quartz shall, after one day in air and six days in water, develop a tensile strength of at least 175 pounds per square inch, and after one day in air and twenty-seven days in water shall develop a tensile strength of at least 240 pounds per square inch. These and other tests as to fineness, set, etc., made in accordance with the standard method prescribed by the American Society of Civil Engineers may, from time to time, be required.

Additional tests may be required.

Walls.—Reinforced concrete may be used in place of brick and stone walls in which cases the thickness may be two-thirds of that required for brick walls as shown in the Sections No. 14 and No. 22 of this ordinance. *Provided*, the unit stresses as set forth in this ordinance are not exceeded.

Walls.

Concrete walls in such cases must be reinforced in both directions in a manner to meet the approval of the Building Inspector.

Steel.—All reinforcements used in reinforced concrete shall be of standard grade of structural steel or iron of either grade to meet the "Manufactures' Standard Specifications," revised February 3, 1903.

Reinforcements shall be steel or iron, etc.

Reinforced concrete slabs, beams and girders shall be designed in accordance with the following assumptions and requirements:

Design of reinforced concrete slabs, &c.

(a) The common theory of flexure to be applied to all beams and members resisting bending.

Requirements.

(b) The adhesion between the concrete and steel is sufficient to make the two materials act together.

(c) The design shall be based on the assumption of a load four times as great as the total load (ordinary dead load plus ordinary live load).

(d) The steel to take all the tensile stresses.

(e) The stress-strain curve of concrete in compression is a straight line.

(f) The ratio of the moduli of elasticity of concrete to steel:

Stone or gravel .....1 to 12
Slag concrete .....1 to 15
Cinder concrete .....1 to 30

The allowable unit transverse stress upon concrete in compression:

Stone or gravel concrete.....600 lbs. per sq. in.
Slag concrete .....400 lbs. per sq. in.
Cinder concrete .....250 lbs. per sq. in.

The allowable unit transverse stress in tension:

Iron .....12,000 lbs. per sq. in.
Steel .....16,000 lbs. per sq. in.

The allowable unit shearing strength upon concrete:

Stone or gravel concrete.....75 lbs. per sq. in.
Slag concrete .....50 lbs. per sq. in.
Cinder concrete .....25 lbs. per sq. in.

The allowable unit adhesive strength of concrete:

Stone or gravel concrete.....50 lbs. per sq. in.
Slag concrete .....40 lbs. per sq. in.
Cinder concrete .....15 lbs. per sq. in.

The allowable unit stresses upon concrete in direct compression in columns:

Stone or gravel concrete.....500 lbs. per sq. in.
Slag concrete .....300 lbs. per sq. in.
Cinder concrete .....150 lbs. per sq. in.

Stress upon hoop columns.

The allowable unit stress upon hoop columns composed of stone or gravel concrete shall not be over 1,000 pounds per square inch, figuring the net area of the circle within the hooping. The percentage of longitudinal rods and the spacing

of the hoops to be such as to permit the concrete to safely develop the above unit stress with a factor of safety of four.

When steel or iron is in the compression sides of beams the proportion of unit stress taken by the steel or iron shall be in the ratio of the modulus of elasticity of the steel or iron to the modulus of elasticity of the concrete; *provided*, that the rods are well tied with stirrups connecting with the lower rods of the beams; *provided, further*, that when rods are used in compression, the approval of the Building Inspector must be obtained.

In reinforced concrete construction beams and girders shall be treated as T-beams.

In the design of structures involving reinforced concrete beams and girders, as well as slabs, the beams and girders shall be treated as T-beams, with a portion of the slab acting as flange in each case. The portion of the slab that may be used to take compression shall be dependent upon the horizontal shearing stress that may exist in the beam, and in no case shall the slab portion exceed twenty times the thickness of the slab.

All reinforced concrete T-beams must be reinforced against the shearing stress along the plane of junction of the rib and the flange, using stirrups throughout the length of the beam. Where reinforced concrete girders carry reinforced concrete beams, the portion of the floor slab acting as flange to the girder must be reinforced with bars near the top, at right angles to the girder, to enable it to transmit local loads directly to the girder and not through the beams, thus avoiding an integration of compressive stresses due to simultaneous action as floor slab and girder flange.

In the execution of work in the field, work must be so carried on that the ribs of all girders and beams shall be monolithic with the floor slabs.

Joints.

In all reinforced concrete structures special care must be taken with the design of joints to provide against local stresses and secondary stresses due to the continuity of the structures.

Shrinkage.

Shrinkage and thermal stresses shall be provided for by the introduction of steel.

Bending moments.

In the determination of bending moments due to the external forces, beams and girders shall be considered as simply supported at the ends, no allowance being made for continuous construction over supports. Floor slabs, when constructed continuously, and when provided with reinforcement at top of slab over the supports, may be treated as continuous beams, the bending moment for uniformly distributed loads being taken at not less than WL-10 in case of square floor slabs which are reinforced in both directions and supported on all sides, the bending moment may be taken at WL-20, *provided,* that in floor slabs in juxtaposition to the walls of the building the bending moment shall be considered as WL-8, when reinforced in one direction, and if the floor slab is square and reinforced in both directions, the bending moment shall be taken at WL-16.

When the shearing stresses developed in any part of a reinforced concrete building exceed under the multiplied loads the shearing strength as fixed in this section, a sufficient amount of steel shall be introduced in such a position that the deficiency in the resistance to shear is overcome.

Limit of adhesion between concrete and steel.

When the safe limit of adhesion between the concrete and steel is exceeded, provision must be made for transmitting the strength of the steel to the concrete.

Columns.

Reinforced concrete may be used for columns in which the ratio of the length to least side or diameter does not exceed fifteen. If more than 15 diameters the allowable stress shall be increased proportionally. Reinforcing rods that are introduced for lateral stresses must be tied together at intervals of not more than the least side or diameter of the columns.

Rods.

Longitudinal reinforcing rods will not be considered as taking any direct compression.

Load tests.

The contractor must be prepared to make load tests in any portion of a reinforced concrete building within a reasonable time after erection and as often as may be required by the Building Inspector. The tests must show that the construc-

tion will sustain a load equal to twice the calculated live load without signs of cracks.

No stable within 40 ft.

SEC. 77. No building within forty feet of the property of any adjoining owner shall be erected or converted to use as a stable, unless such use is authorized by the consent of the Public Building Committee of Council. (*a*)

(*a*) Sec. 31 of the Charter prohibits the passage of a special ordinance exempting any individual, &c., from the operation of a general ordinance.

And the common law rule is, that an ordinance to be good must be reasonable, certain and uniform. The validity of the above section is doubted.

Frame buildings shall not be moved.

SEC. 78. No wooden building within or without the city limits shall be moved to any position within the city limits.

Permits for additions.

No permit to increase the height or ground area of any part of a frame building shall be granted, and no permit for alterations or repairs to a frame building shall be granted if the estimated cost of the proposed alteration and repairs exceed one-half of the cost of a like new building exclusive of the cost of the foundations.

Shingles.

Wood and Wooden Shingles.—It shall only be lawful to use wood or wooden shingles as follows:

Manner of use.

SEC. 79. In the construction of any brick or stone single private dwelling, which shall hereafter be so erected in this city, as that no part of the walls thereof shall be less than ten feet from any building line, or nearer than ten feet to the line of any adjoining lot, and if built on land of the same owner, nearer than twenty feet to any other building, it shall not be unlawful to use wood or wooden shingles on the roof, bay or bow windows above the first story and on the gables above the second story.

Privilege of Building Inspector.

SEC. 80. The Building Inspector having any duty to perform under the provisions of this ordinance may, so far as may be necessary for the performance of his duties enter any building or premises in the city.

Buildings must not be dangerous.

SEC. 81. Every building and part thereof and appurtenant thereto shall be maintained in such repair as not to be dangerous. The owner or the agent for the owner shall be responsible for the maintenance of all buildings and structures.

Violations constitute a nuisance.

SEC. 82. Any building or structure which is erected, altered or maintained in violation of the provisions of this ordinance, shall be deemed a common nuisance without other proof thereof than proof of its unlawful construction. Whoever violates any provision of this ordinance, or whoever builds, alters, or maintains any structure or any part thereof in violation of any provision of this ordinance and whoever refuses to make the said building or structure comply with the provisions of this ordinance after receiving notice to do so from the Building Inspector, shall be punished by a fine not exceeding two hundred dollars for each offence and the further sum of ten dollars for each and every day the nuisance remains unabated.

Fines.

All fines when collected shall be paid to City Treasurer for use of the city.

Prosecutions.

SEC. 83. Prosecutions for the violations of the prohibitions of this ordinance shall be before the Judge of the Municipal Court and the Municipal Court of the City of Wilmington.

SEC. 84. All former building ordinances or regulations now in force be and the same are hereby repealed.

Approved May 17, 1909.

CHAPTER XI.

ORDINANCES RELATING TO FOOTWAYS AND SIDEWALKS.

	Page
1. Widening Foot Walks on Delaware Avenue	905
2. Foot Ways on West Side of Delaware Avenue	906
3. Board Walks on Foot Ways	906

AN ORDINANCE for widening the footwalks on each side of Delaware avenue.

Footways widened on Delaware avenue 5 feet.

SECTION 1. That under the authority given by the second section, a further supplement to the "Act to alter and establish the Charter of the Borough of Wilmington," that the footways on each side of Delaware avenue from Tatnall street to the city line be widened five feet, and that the admeasurement of the ground for this increased width of five feet be taken parallel with the curb stone.

Buildings to be set back.

SEC. 2. That no erection fronting houses that may hereafter be built on Delaware avenue within the limits prescribed in the first section of this ordinance shall extend from said buildings further than five feet on the footways, so as to have a clear and unobstructed footway twelve feet nine inches in width in conformity with the express condition of which said five feet is surrendered by owners of the property.

Wooden buildings prohibited.

SEC. 3. That no wooden buildings shall be erected on either side of Delaware avenue from Tatnall street north to the city line.

Passed at City Hall, October 21, 1847.

Footway widened 5 feet.

AN ORDINANCE for widening the footways on the west side of Delaware avenue.[1]

SECTION 1. That under the authority given by the second section of a further supplement to the "Act to alter and re-establish the Charter of the Borough of Wilmington," that the footway on the west side of Delaware avenue, from Tatnall street to the city line, be widened five feet and that the admeasurement of the ground for this increased width of five feet be taken parallel with the curb stone.

Buildings to be set back.

SEC. 2. That no erection fronting houses that may hereafter be built on said Delaware avenue within the limits prescribed in the first section of this ordinance shall extend from said buildings further than five feet on the footway so as to leave a clear and unobstructed footway twelve feet in width, in conformity with the express condition on which said five feet is surrendered by the owners of the property.

AN ORDINANCE in relation to footways and sidewalks.

Board walks to be laid where pavements removed.

SECTION 1. That from and after the passage of this ordinance, it shall be the duty of the person to whom a written license is granted to use a part of any street, lane, alley or footway for the purpose of erecting or repairing any house or building as provided by Section 3, of an ordinance, entitled "Offences against the Public Economy and certain nuisances," passed October 30, 1856; in case the paved footway or sidewalk is taken up and removed, to cause to be placed, put down, and kept in lieu thereof, during the erection or repairing of such building, boards or planks so as to leave a board or plank footway of at least three feet in width, for the safe and convenient passage of persons walking along and upon the same. *Provided, however,* that this shall not apply to excavations of cellars or foundations during working hours. If any person, as aforesaid, shall neglect or refuse to comply with the provisions of this ordinance, every person so offending shall

Exceptions.

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1. Date of passage of this ordinance is not given in any of the printed editions of ordinances published.

forfeit and pay a fine of ten dollars for each and every day of such neglect or refusal. Penalty for violation.

SEC. 2. It shall be the duty of the Building Inspector, as well as of the High Constable and the City Constables, to see that the provisions of this ordinance are enforced, and the duties hereby imposed are complied with. Police to enforce.

Passed at City Hall, March 27, 1884.

CHAPTER XII.

ORDINANCES RELATING TO SEWERS, DRAINS AND RUNS.

	Page		Page
1. Dimensions of Culverts on Shipley Run	908	4. Re-establishing Course of Shipley Run	911
2. Changing Course of Shipley Run	910	5. Widening Bed of Shipley Run	912
3. Changing Direction of Shipley Run	910	6. Re-establishing Course of Shipley Run	913

AN ORDINANCE to regulate the dimensions of culverts that may be built to carry the water of Shipley run.

Size of Shipley run culvert.

Tenth street.

Seventh street.

Fifth street.

Second street.

Newport turnpike.

Clements run.

SECTION 1. All culverts that shall hereafter be built or rebuilt, to convey the waters of Shipley run, (*a*) shall conform to the following described dimensions, to wit: From the source of said run to and under Tenth street, five feet wide, with side walls three feet high; from Tenth street to and under Seventh street, eight feet wide, and side walls three feet high; from Seventh street to and under Fifth street, nine feet wide and side walls four feet high; from Fifth street to and under Second street, ten feet wide, and side walls four feet high; from Second street to and under the Newport turnpike, ten feet wide, and side walls four feet six inches high; from the Newport pike to Clements run, ten feet wide, and side walls five feet high.

(*a*) In the case below cited the Chancellor referred to Shipley Run as follows:

The Chancellor: "It is a perversion of the common law doctrine in respect to the diversion of natural watercourses, to apply that doctrine to such a stream,—if a stream it can be possibly called,—as that of Shipley Run, rising in the springs of the northern part of the city, and passing by a sinuous course, under sinks and manufactories, through culverts, and emptying its filth, before it finally discharges into the Christiana River, upon low ground, in the midst of the city, and endangering the health and comfort of a numerous surrounding population. Shipley Run is no such watercourse as the municipal authorities of a large city, like Wilmington, may not divert, or fill up, if they choose,

for the protection of the lives, health and comfort of the inhabitants of the city."

Murphy vs. Wilmington, 5 Del. Ch. 281 at 291-292 (yr. 1879)

The Court held compensation did not have to be paid for such a stream of water.

Murphy et al vs. Wilmington, 6 Houst. 108 at 129. (yr. 1880)

Changes in height.

SEC. 2. The changes in height shall be made in the bottom of the culvert, so that on the lower side of Seventh street there shall be a step down of one foot; on the lower side of Second street, a step down of six inches; and on the lower side of the Newport pike, a step down of six inches.

Changes in width.

SEC. 3. The changes in width shall be divided in equal offsets, on each side of the centre lines, at those streets where they occur, so that the axis of the adjoining sections of the said culverts shall coincide.

Direction and curves of the culvert.

SEC. 4. All sections of this culvert built between streets shall be in direct lines from one street culvert to another, always, provided, that every change of direction shall be made by a curve of at least forty feet radius on the axis of the culvert.

The covering or arch of the culvert.

SEC. 5. Whenever any section of said culvert is covered by masonry the covering shall be a sufficient brick arch turned on the segment of a circle, of which the spring shall be one-fourth of the span.

Unlawfully encroaching upon culvert.

SEC. 6. It shall not be lawful for any person or persons building in the vicinity of the said run to encroach on the aforesaid arrangement or dimensions of the culverts built or to be built.

Culvert on dividing line.

SEC. 7. When the said run is the dividing line between the property of two or more persons, the centre of said run and the centre of said culvert shall be ascertained and established by a City Surveyor on the payment of the customary charges.

Passed at City Hall, January 13, 1870.

AN ORDINANCE to change the course of Shipley run between Seventh and Eighth streets.

Changes in courses.

SECTION 1. That the present course and direction of that part of Shipley run between Seventh and Eighth streets are hereby altered and changed, and the course and direction thereof between said streets shall hereafter be as follows, to wit: Beginning at the building line on the north side of Seventh street, in the centre of the culvert now erected over said run; and running thence, for the centre line of said run, north thirty-seven degrees and fifteen minutes east, thirty-nine feet, to a stake in said run, at a point of curve of fourteen degrees and fifteen minutes to the left; thence, with said curve one hundred and twenty-four and five-tenths feet to a stake at a point of tangent in said run; thence, with said tangent, north nineteen degrees and fifteen minutes east, one hundred and five feet to a stake, at the building line on the south side of Eighth street, in the centre of a culvert now erected over said run.

Width of run, 8 feet.

SEC. 2. The width of said run between Seventh and Eighth streets shall be eight feet, and all culverts which shall be built over the said part of said run shall conform to the course, direction and dimensions of the same hereby established.

Passed at City Hall, July 9, 1874.

AN ORDINANCE to change the course and direction of Shipley run from the north side of Fourth street to the south side of Sixth street.

Course of Shipley run between Fourth street and Sixth street.

SECTION 1. That the present course and direction of that part of Shipley run, between Fourth and Sixth streets are hereby altered and changed, and the course and direction of the centre line of said run, between the said streets, shall hereafter be as follows, to wit: Beginning at the building line on the north side of Fourth street, said beginning point is five feet westerly from the face of east wall of the sewer as now constructed across Fourth street; thence, from said point

Dimensions prescribed.

north fourteen degrees and twenty-five minutes east, seventy-

one feet seven inches and a half (71 ft. 7½ in.) to an angle in said run five feet westerly from the stone wall on the east side of the present run; thence, north twenty-one degrees six minutes (21 deg. 6 min.) east fifty-four feet and eight inches (54 ft. 8 in.) to another point or angle in said run five feet westerly from the general range of the stone wall on the east side of said run; thence, north twenty-eight degrees and forty-three minutes (28 deg. 43 min.) east sixty-six feet (66 ft.) to an angle or point, which is five feet easterly, from the face of the wall on the west side of said run, said point is sixty feet (60 ft.) easterly from the east side of Monroe street, measured at right angles from said street; thence, passing under the buildings forty-eight feet six and one-half inches to an angle in said run, at the south side of Fifth street, said point is fifty-eight feet two and a half inches easterly from the east side of Monroe street; thence, north fifty degrees and thirty-four minutes (50 deg. 34 min.) east three hundred and twenty-five feet (325 ft.), to a point at the south side of Sixth street, said point is four feet and six inches west of the face of the east wall of the sewer now constructed across Sixth street.

Width from Fourth to Fifth street. From Fifth to Sixth street.

SEC. 2. The width of said run from Fourth street to the south side of Fifth street, shall be ten feet; and from the south side of Fifth street to the south side of Sixth street, shall be nine feet; and all culverts which shall be built over the aforesaid parts of the said run, shall conform to the course, direction and dimensions of the same hereby established.

Passed at City Hall, May 21, 1875.

AN ORDINANCE to change and re-establish the course of Shipley run from the north side of Eighth street to the east side of Monroe street.

Course and direction.

SECTION 1. That the present course and direction of that part of Shipley run, between the north side of Eighth street and the east side of Monroe street, are hereby altered and changed, and the course and direction thereof, between said streets, shall hereafter be as follows, to wit: Beginning at the building line on the north side of Eighth street in the centre

of the culvert now erected over said run; and running thence, for the centre line of said run north, twenty-one degrees and thirty minutes east, eighty-three feet and four inches to a point of curve making an angle with the centre line of Eighth street of seventy-six degrees and twenty-two minutes; thence, from said point of curve by a curved line of two hundred and forty-four feet and forty-eight hundredths of a foot radius, deflecting to the left for a distance of one hundred feet to a point of tangent, making the angle at the intersection of the tangents twenty degrees and seven minutes; thence, from said tangent point north, two degrees and fifteen minutes west, one hundred and twenty feet to the east side of Monroe street, in the centre of the culvert now erected over said run.

Width of run from Seventh to Monroe street.

SEC. 2. The width of said run from the north side of Seventh street to the said easterly side of Monroe street shall be ten feet, and all culverts which shall be built over said run, between the above mentioned points, shall conform to the course, direction and dimensions of the same as hereby established.

SEC. 3. That all ordinances and parts of ordinances inconsistent herewith be and the same are hereby repealed.

Passed at City Hall, September 20, 1877.

AN ORDINANCE changing the course and widening the bed of Shipley run from Maryland avenue to Marsh lane.

Width.

SECTION 1. That the bed of Shipley run, from the easterly side of Maryland avenue, to and under the Philadelphia, Wilmington and Baltimore Railroad, shall be twenty feet wide, and from the P., W. & B. R. R. to Marsh lane, shall be twenty feet wide.

Course of Shipley run.

SEC. 2. The course of Shipley run from Maryland avenue to Marsh lane shall be as follows: Beginning at a point for the centre line of said culvert, on the south side of Maryland avenue and distant from the northeasterly side of East Liberty street 176 feet 6 inches; thence, deflecting to the right from Maryland avenue, making an angle with said ave-

nue 86 degrees 45 minutes, and running 22 feet to a point of curve to the right, with a radius of 220 feet; thence, with said curve, a deflection of 60 degrees 50 minutes to a point of reverse curve, the distance measured on the chord subtending the arc from point of curve to point of reverse curve is 224 feet; thence, with said reverse curve deflecting to the left 13 degrees 30 minutes, or until a tangent to the curve will pass down the centre of the run as it is now walled in by the Philadelphia, Wilmington and Baltimore, and Delaware and Western Railroads; the distance measured on a chord from point of reverse curve to point of tangent is 113 feet; thence, with said tangent 186 feet to a point of curve on the southeasterly side of the Delaware and Western Railroad; thence, with a curve to the right, radius 508 feet, deflection 10 degrees 55 minutes, distance measured on a chord subtending the arc is 96 feet; thence, with a curve to the left, radius 1153.5 feet, total deflection 16 degrees 14 minutes to a point of compound curve, the distance measured on the chord subtending the arc is 340 feet; thence, from said point of compound curve, radius 228 feet, total deflection 55 degrees 36 minutes, distance measured on the chord subtending the arc is 212.5 feet to a point of tangent; thence, with said tangent 160 feet to the easterly side of Marsh lane. The said run or sewer shall be twenty feet wide from Maryland avenue to the east side of Marsh lane.

SEC. 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Passed at City Hall, November 1, 1877.

AN ORDINANCE to change and re-establish the course of Shipley run from the north side of Ninth street to the east side of Adams street.

SECTION 1. That the present course and direction of that part of Shipley run, between the north side of Ninth street and the east side of Adams street, are hereby altered and changed, and the course and direction thereof between the said streets shall hereafter be as follows, to wit: Beginning at the building line on the north side of Ninth street at the distance

Course and direction.

of two hundred and six feet and two inches (206 ft. 2 in.) easterly from the east side of Adams street, and in the centre line of the culvert now erected over said run; and running thence, for the centre line of said run, north, twenty-eight degrees and five minutes east, twenty-nine feet to a point of curve; thence, from said point of curve by a curved line of one hundred and forty feet radius, deflecting to the left for a distance of one hundred and fifty-six feet to a point of reverse curve; thence, with said reverse curve, with a radius of two hundred and forty feet, deflecting to the right one hundred and forty-five and a half feet, to the easterly side of Adams street, at the centre line of sewer now constructed over said run across Adams street.

Width of run.

Culverts.

SEC. 2. That the width of said run from the north side of Ninth street, to the said easterly side of Adams street, shall be eight feet, and all culverts which shall be built over said run between the above mentioned points, shall conform to the course, direction and dimensions of the same as hereby established.

SEC. 3. All ordinances and parts of ordinances inconsistent herewith be and the same are hereby repealed.

Passed at City Hall, July 3, 1879.

CHAPTER XIII.

NAVIGATION.

	Page		Page
1. Harbor Master and Regulations of Vessels.....	915	2. Regulating the Speed of Steamboats	918

AN ORDINANCE to prevent obstructions in the channels of the Christiana river and Brandywine creek, within the limits of the city.

Anchoring of vessels between Tatnall and Poplar streets prohibited.

Exceptions.

Channel to be kept free for sailing vessels and steamboats.

Penalty for violation.

Vessels drawing 12 feet of water shall moor head and stern with the current.

SECTION 1. From and after the twentieth day of October, instant, it shall be unlawful for the master, captain or other person having charge of any vessel, to anchor, lay to, or otherwise occupy in a stationary manner (after four hours notification) with his vessel, any part of the Christiana river, between Tatnall street and one hundred feet below Poplar street (except on the south side, where such vessel shall leave two hundred feet of the channel open and free from obstruction) and any vessel or vessels laying to, or anchoring between the said one hundred feet below Poplar street and the mouth of said river, shall leave at least one hundred and fifty feet of the channel open and free for all vessels and steamboats to pass and repass without obstruction. Any person so offending shall be guilty of a common nuisance, and for the first offence shall forfeit and pay a fine of five dollars, and for every subsequent offence shall forfeit and pay a fine of ten dollars. All vessels drawing twelve feet of water or over, which may be lying in the stream of said river, between the said one hundred feet below Poplar street and the mouth of said river, shall, after the expiration of twenty-four hours from the time of their first anchoring, be moored head and stern with the current, and for neglect or failure herein, the master, captain or other person having charge of said vessel or vessels, shall be guilty of a common nuisance, and for the first offence shall forfeit and pay a

Penalty.

fine of five dollars, and for the second and every subsequent offence a fine of ten dollars.

Discharging ballast into creeks unlawful.

SEC. 2. From and after the said twentieth day of October instant, it shall not be lawful for any person or persons to discharge from any vessel or otherwise into the Christiana river or into the Brandywine creek, within the limits or jurisdiction of this city, any ballast or any other substance calculated to fill up, or which might tend to create any obstruction to the free navigation of said river or creek; and any person so offending shall be guilty of a common nuisance, and for every such offence shall forfeit and pay a fine not exceeding fifty dollars.

Vessels in dock shall be made securely fast.

SEC. 3. When any ship or vessel shall be hauled into any wharf or dock, or alongside of another vessel that may be lying at such wharf or dock, the owner, master, pilot, or whoever may have the command, care or direction of her, shall have her securely made fast, and if outside of another vessel, shall get one good fast from each end of the vessel to the shore, with sufficient fenders between them and the inside vessel, and shall cause the flukes of their anchors to be taken in board, and within one hour thereafter, if required, cause her jib-boom, spritsail, yard, spanker and ringtail booms, if any they have, to be rigged in, and their lower yards topped up in such manner as least to interfere with vessels passing.

Anchors not to interfere with vessels passing.

Obstructions to navigation.

SEC. 4. If fasts of vessels then moored at a wharf shall extend across a dock, so as to obstruct the passing or repassing of shallops, lighters or other craft or vessels, the master, or other person having command of such vessel, shall, upon the first application, immediately cause such fast or fasts to be cast off or slacked down.

Vessels obstructing docks.

SEC. 5. If vessels lying at the end of wharves so much interlock with each other as to prevent vessels hauling in and out of the docks, the master, owner, pilot or other person having charge of the same shall, immediately, on application from any person so wanting to haul his vessel in or out of the dock aforesaid, have the vessel or vessels so interfering, moved in such a manner as to accommodate the one applied for, in which case

the vessel making room for another to haul in or out shall have liberty to make her warps fast to the most convenient place adjacent for a reasonable time, and all sea vessels when transporting or wanting to haul into a wharf or dock, or to make sail in order to proceed to sea, shall have the same privilege.

Harbor Master to be appointed.

SEC. 6. For the purpose of having the foregoing rules and regulations faithfully and impartially executed, a Harbor Master shall be [elected by the Council, at the second stated meeting in July next, and annually thereafter,] whose duty it shall be strictly to enforce the foregoing rules (*a*) and regulations, and if any master or captain of any such vessel shall refuse or neglect to comply with the direction of said Harbor Master, while in the execution of his duty as aforesaid, or if any person whatever shall obstruct or prevent said Harbor Master in the execution of his duties aforesaid, such master, captain or other person shall, for each offence, severally, forfeit and pay a sum not exceeding fifty dollars, to be recovered before the [Judge of Municipal Court] for the use and benefit of said city.

See Act of March 27, 1885, 17 D. L. 879.

Duties of the Harbor Master.

Penalty for violation.

(*a*) For the legal meaning of the word "rules," see Sec. 76 "a" of the Charter, and the case of
Morris et al vs. Pilot Coms., 7 Del. Ch. 136. (yr. 1894)

* * * * * * * * * *

Act of April 13, 1883.

Sept. 7, 1882.

Failure to elect a Harbor Master.

[In case of any failure to elect a Harbor Master at the time provided in this section, the Harbor Master then holding office shall hold over until such time as Council shall proceed to elect his successor, who, when elected, shall hold office until the period of the next regular election.]

Salary.

Aug. 23. 1883.

[The salary of the Harbor Master shall be the sum of one hundred dollars per annum, payable in monthly instalments, and he shall not receive any other compensation for performing the duties of Harbor Master.]

Exceptions when vessels are aground.

SEC. 7. The first named penalty in the first section of this ordinance shall not be recovered when vessels are aground or from stress of weather it may be dangerous to remove.

SEC. 8. The fines hereinbefore mentioned shall be recovered before the [Municipal Court] as sums of like amount are recoverable for the use of said city.

Passed at City Hall, October 12, 1837.

AN ORDINANCE to regulate the speed of steamboats within the limits of this city.

Speed of steamboats.

SECTION 1. From and after the passage of this ordinance, it shall not be lawful for any boat or vessel, propelled or navigated by the force or aid of steam, to enter or be propelled in the Christiana river within the limits of the City of Wilmington at a greater rate of speed than as follows: Vessels or boats over 100 tons, four miles per hour; vessels of 100 tons and under, five miles per hour; and the master, commander or manager of any boat or vessel which shall enter or be propelled in the said river, within the limits aforesaid, at a greater rate of speed than is provided by this section, shall be guilty of a common nuisance and for every such offence shall, upon conviction thereof before the [Municipal Court] of this city, forfeit and pay a fine of twenty dollars, the one-half thereof to be paid to the informer, and the other half to be paid into the city treasury.

Penalty.

Duty of Harbor Master.

SEC. 2. It shall be the duty of the Harbor Master for the said city, by himself of his deputy, to leave a copy of this ordinance on board each and every boat or vessel propelled or navigated by steam now in the Port of Wilmington or which may hereafter come into the same.

Ordinance of Sept. 9, 1847, repealed.

SEC. 3. That the ordinance, entitled "An ordinance to regulate the speed of steamboats within the limits of this city," passed September 9, 1847, and all ordinances and parts of ordinances inconsistent with the provisions of this ordinance be and the same are hereby repealed, made null and void.

Passed at City Hall, March 31, 1882.

CHAPTER XIV

WHARVES.

	Page		Page
1. Regulating Leasing of Wharves	919	2. Regulating Use of Leased Wharves	920

AN ORDINANCE regulating the leasing of the wharf property of the City of Wilmington.[1]

Wharf property to be leased at public sale.

SECTION 1. From and after the passage of this ordinance, so much of the wharf property of this city shall be put up at public sale on the first Monday of March of each year as shall come into possession of the city by the expiration of leases heretofore granted, or that may be granted, and sold (*a*) to the highest bidder for the term of three years. [*Provided,* the Committee on Public Buildings have the right to reserve a bid and withdraw any wharf if, in their opinion, the highest bid is not sufficient.]

Feb. 28, 1878.

(*a*) The rents received from the leases of wharves under the above ordinance were expended by "The Council" for the use of the city until the year 1887.

The Street and Sewer Department was created in that year, and it claimed and received the rents from that time until about the year 1900 when the Court decided the rents belonged to "The Mayor and Council of Wilmington," and not to the Street and Sewer Department.

Lore, C. J.: "—also a third suit brought by the same plaintiffs against the said Auditor of the City of Wilmington * * in which the same issue was raised in regard to rents collected from lessees of wharves along the river front at the ends of streets owned by the said City of Wilmington. * * Judgment was rendered in favor of the defendant in each case." i. e., for "The Council" and against the Street and Sewer Department.

Street and Sewer Department vs. Connell, 2 Penn. 571 at 572. (yr. 1900)

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1. Wharves are now leased by the Board of Directors of the Street and Sewer Department.

Walnut street wharf exempt for term of P., W. & B. R. R. Co.'s lease.

SEC. 2. The foot of Walnut street, now leased to the Philadelphia, Wilmington and Baltimore Railroad Company, shall be exempt from this ordinance as by a resolution of Council which states, "That in consideration of certain amounts of money spent thereon by the said P., W. & B. Railroad Company, that Council would apply for power from the Legislature to grant a lease to said Philadelphia, Wilmington and Baltimore Railroad Company for the term of fifty years from March 25th, 1862," and which power has been applied for.

Shipley street wharf exempt until present lease expires.

French street wharf.

SEC. 3. The wharf property at the foot of Shipley street, now leased by James Murphy, shall be exempt from this ordinance until the expiration of the time specified in his lease, also the wharf property at the foot of French street, now leased to George W. Bush until the expiration of the time specified in his lease, provided he makes all needed repairs to the wharf at his own expense, and shall leave it in good condition.

To be kept in repair by renter at his expense.

West street to remain open.

SEC. 4. That portion of West street which has been leased to the Harlan & Hollingsworth Company as a wharf property, being a portion of said West street and not a wharf property, shall remain open to the public, and leased to no one.

Jan. 15, 1874.

[SEC. 5. That the wharf property at the foot of Third street, and the foot of Fourth street, and the wharf property at the foot of Poplar street, shall be exempt from the operation of this ordinance, and the Council shall have power from time to time to let or demise the same in such manner and for such times not exceeding ten years as may be deemed expedient.]

Passed at City Hall, February 9, 1871.

AN ORDINANCE relating to the leases of public wharves.

Wharves to be leased only for certain purposes.

SECTION 1. That public wharves belonging to the City of Wilmington, and being situated at the end of public streets, shall be leased only for the purpose of loading and unloading of merchandise in the course of business, and it shall not be lawful for any person or persons leasing such wharves to store

on such wharves any merchandise or other material, but shall keep the said wharf between the building lines of the street clear; nor shall any person leasing said wharves erect any building or structure over or on such wharves, and all leases hereafter made shall have therein plainly expressed the provisions of this ordinance.

Penalty for violation.

SEC. 2. Any violation of the provisions of this ordinance shall be punished with a fine of five dollars, and shall, at the discretion of the Council, work a forfeiture of the lease.

Passed at City Hall, February 14, 1884.

CHAPTER XV

RAILROADS.

	Page		Page
1. Minors on Moving Railroad Cars	922	2. Requiring Gates at Railroad Crossings	923

AN ORDINANCE to prevent boys or minors getting on railroad cars while passing through this city.

WHEREAS, It has been shown to this Council that many boys or minors are in the habit of riding on the cars, while passing through this city, to the great danger of their lives; and

Oct. 25, 1884.

WHEREAS, the officers of the railroad [and street railway] companies find it impossible entirely to break up the practice; now, therefore,

Minors prohibited from getting upon moving railroad cars.

SECTION 1. It shall not be lawful for any boy or minor to get upon any railroad (*a*) [or street railway] car (*b*) while it is in motion within the limits of this city; and if any boy or minor shall, in violation of this ordinance, get upon any railroad [or street railway] car whilst in motion, each and every boy or minor aforesaid, so offending shall, upon conviction thereof before the [Municipal Court,] forfeit and pay a fine of [not less than one nor more than five dollars.]

Ordinance of July 26, 1886.

(*a*) As to the duty a railroad company owes a minor child,—a trespasser—on its cars,—see the case of
Tully's Admr. vs. P., W. & B. R. R., 3 Penn. 455. (yr. 1901)

(*b*) As to the duty a street railway company owes a minor child—a trespasser—on its cars, see the case below cited. In this case the Court said:

Boyce, J.: "And if you find that the motorman of the defendant saw" the child "in a dangerous position upon the front platform of the car while it was in motion, and that he was then an infant of about the age of five years, and that by an order or threat of the said motorman he was frightened to such an extent as to cause him to jump or fall from the said car while it was in motion, and that the ac-

cident and injury to him was caused thereby, the defendant would be liable.''

Goldstein vs. Peoples Ry., 5 Penn. 306 at 311. (yr. 1905)

Passed at City Hall, April 3, 1851.

AN ORDINANCE in relation to railroad companies.

Duty of railroad companies to place gates at street crossings.

SECTION 1. It shall be the duty of the several railroad companies operated by steam power, having trains of cars passing over the railroad tracks, where the same crosses the public streets of this city, to place gates across such of said streets at railroad crossings as the Council may, by resolution or otherwise, order and direct. Any such railroad companies failing or refusing to comply with the provisions of this ordinance shall, for each such offence, forfeit and pay a fine of fifty dollars, to be recovered before the [Municipal Court] for the use of the city.

Passed at City Hall, May 12, 1881.

CHAPTER XVI

SALES AND LEASES OF REAL ESTATE.

		Page
1.	Authorizing Lease of "Sand Hole Lot" to Trustees for Use of the Militia.....	924
2.	Authorizing Sale of Land at Twelfth and Orange Streets	926
3.	Ratifying Sales of Land and Ordering Deeds to be Made to Purchasers.....	926
4.	Authorizing Sale of Land at Ninth and DuPont Streets	927

AN ORDINANCE authorizing the leasing of a portion of a lot of land belonging to the City of Wilmington, known as "Sand Hole Lot." (a)

(a) See Sec. 1 "a," and Sec. 2 "a," pp. 513-514 of this volume, where Chancellor Saulsbury, in the case of Coyle vs. McIntire, 7 Houst. p. 44, refers to this "sand lot" by way of illustration, in showing the meaning of "public" and "private" property owned by the city. The property is "public" as far as the inhabitants of the city are concerned, but it has a "private" character as against the county or the State.

Who are authorized to lease lot.

Trustees to whom the same is to be leased and their successors.

Location and description of lot to be leased.

SECTION 1. That the Committee on Public Buildings be, and is hereby authorized and empowered to lease in the name of The Mayor and Council of Wilmington, to J. Parke Postles, William T. Porter, E. Tatnall Warner, Harry T. Gause and Edward G. Bradford, Jr., and their successors, as *Trustees* in trust, for the use of the militia of the State of Delaware, located in the City of Wilmington, for the term of ninety-nine years, at an annual rental of twenty-five dollars, payable in annual payments, the following described tract of land belonging to said city, to wit: Beginning at southwest corner Thirteenth and Orange streets; thence, southerly by said Orange street one hundred and sixty feet to a corner; thence, westerly parallel with Thirteenth street, eight feet to a corner; thence, northerly parallel with Orange street, one hundred and sixty feet to the southerly side of Thirteenth street; and thence, thereby easterly, eighty feet to the westerly side of

Orange street and place of beginning. Containing within said bounds, twelve thousand eight hundred square feet of land.

Trustees authorized to erect armory.

SEC. 2. Trustees, hereinbefore mentioned, or their successors, will be required to commence the erection of a substantial brick building to be used for the purposes of an armory for the use of the militia aforesaid, within one year from the date of the passage of this ordinance, and complete the same within two years from the passage of this ordinance, said building to be built in a good and substantial manner, and with good architectural taste and design, so that the same, when completed, will present a neat and respectable appearance on Orange street and on Thirteenth street. The cost of said armory building, when it is completed, shall not be less than ten thousand dollars.

Failure of Trustees to erect armory.

SEC. 3. In the event of the failure of the Trustees aforesaid, or their successors, to commence the erection of said armory building within one year from the passage of this ordinance, or their failure to complete the same within two years from the passage of this ordinance, or in case at any time after the erection of said armory, during the term of ninety-nine years aforesaid, from the passage of this ordinance, the militia aforesaid shall, for a period of two years, fail to use said armory building for the purpose for which it was erected, under, and by the provisions of this ordinance, then, and in such event, the lease given to the Trustees aforesaid and their successors, shall immediately become null and void, and the said lot of land, with the buildings and improvements erected thereon, shall immediately become the property of the City of Wilmington, to be by it taken possession of, used or sold by said city, in conformity with the Act or Acts of the General Assembly, then governing the sale of city property by The Mayor and Council of Wilmington. *Subject, however,* to any lien or liens against said armory building not exceeding two-thirds the value thereof, in case said building is not used for the purpose of an armory, for the term of ninety-nine years from the passage of this ordinance; and in case the said armory building shall be used for the purpose for which it is erected, for the full term of ninety-nine years from the pas-

Lease to be void, when.

Effect thereof.

sage of this ordinance, then, and in such an event, the said armory building shall, at the expiration of said term of ninety-nine years, become the property of the City of Wilmington, absolutely; free from all liens which may have been placed thereon by the Trustees aforesaid, or their successors.

Passed at City Hall, April 24, 1884.

AN ORDINANCE authorizing the sale of certain real estate in the City of Wilmington.

Land at Twelfth and Orange streets to be sold.

SECTION 1. That all that portion of real estate belonging to the City of Wilmington, and lying and being between Twelfth and Thirteenth streets and between Orange and Tatnall streets in the said city, be exposed to public sale at such time and upon such terms as may be deemed advisable by the Committee on Public Buildings of the Council, and that The Mayor and Council of Wilmington be and the said corporation is hereby authorized to make the proper deeds to purchasers thereof.

Passed at City Hall, June 25, 1885.

AN ORDINANCE althorizing and directing the completion of the sale of certain real estate in the City of Wilmington, and ratifying and confirming the same.

Preamble.

WHEREAS, Pursuant to the provisions of an Act of the General Assembly of the State of Delaware, authorizing the sale of certain real estate belonging to the City of Wilmington, passed at Dover, April 18th, A. D. 1883, and of an ordinance passed by the Council of Wilmington, June 25th, A. D. 1885, and approved by the Mayor, June 27, A. D. 1885, to carry out the provisions of said Act, the said real estate thereby authorized to be sold was, on the 11th day of July, A. D. 1885, exposed to public sale and struck off by parcels to certain parties who were the highest and best bidders therefor. Now, therefore,

BE IT ORDAINED, by The Council of Wilmington (two-thirds of all the members thereof for the time being herein concurring):

SECTION 1. That the said lots or parcels of the said real estate be sold and conveyed in fee simple respectively to those persons or parties who at said public sale were the highest and best bidders therefor, and to whom the same were as aforesaid struck off, and the said sale is hereby ratified, approved and confirmed, and The Mayor and Council of Wilmington be and the said corporation is hereby authorized and directed to sell and convey in fee to the said purchasers or parties to whom said lots, parcels or portions were struck off at said sale, such lots, parcels or portions so struck off to them, and to complete said sale by making, executing and delivering to the purchasers aforesaid respectively proper deeds for those lots, parcels or portions of said real estate so struck off to them at said public sale and purchased by them as aforesaid, upon the payment by the said purchasers of the sum or sums bidden by them for the said lots respectively at said public sale.

Lots ordered sold.

Mayor and Council to execute and deliver proper deeds.

Passed at City Hall, July 30, 1885.

AN ORDINANCE providing for the sale of certain real estate in the City of Wilmington.

SECTION 1. That all that portion of real estate belonging to the City of Wilmington, lying and being between DuPont street, Scott street, Eighth street and Ninth street in said city, and more especially designated in an Act of the General Assembly of the State of Delaware, entitled "An Act to authorize the sale of certain real estate in the City of Wilmington," passed at Dover, March 7, 1889, authorizing the sale thereof, be exposed to public sale at such time or times, and at such place or places, and by lot or otherwise as the Committee on Public Buildings may deem advisable, and that The Mayor and Council of Wilmington, by its proper officers, shall execute and deliver to any purchaser or purchasers proper deeds in fee simple.

Certain land to be sold.

SEC. 2. The monies arising from the sale of real estate by Section one (1) of this ordinance designated shall be paid

Monies, where deposited.

over to the City Treasurer for the use of the Commissioners of the Sinking Fund, in accordance with the terms of the Act of the General Assembly above named.

Passed at City Hall, February 27, 1890.

CHAPTER XVII

TAXATION.

Regulating the Assessment and Collection of Taxes on Horses, Etc.

AN ORDINANCE regulating the assessment and collection of taxes on horses and other animals in the City of Wilmington.

Preamble.

WHEREAS, By an Act of the General Assembly of the State of Delaware, entitled "An Act concerning horses and other animals in the City of Wilmington," passed at Dover, March 12, 1879, it was enacted that there should be assessed and collected by The Mayor and Council of Wilmington, for the use of the city, an annual tax of one dollar upon each horse, mule, ass or animal of the horse kind, owned or kept for use within the limits of the City of Wilmington, and that the Council should, by ordinance, prescribe the manner of assessing and collecting the same; therefore,

BE IT ORDAINED, by The Council of Wilmington:

Duty of Assessors and Collectors.

Assessment of horses.

SECTION 1. That it is hereby made the duty of the Assessors and Collectors of the City of Wilmington, immediately upon the passage of this ordinance, and annually thereafter, to assess a tax of one dollar upon each horse, mare, mule, ass or animal (a) of the horse kind, owned or kept for use within the limits of this city. The assessment shall be made in the name of the owner or owners if known, or if unknown then in the name or names of the persons having charge of any such animal or using the same. Upon the completement of the assessment the list shall be placed in the office of the Clerk of Council for inspection.

(a) The Council has authority to fix the amount of a tax on animals

without giving any notice or hearing thereon to the owner or owners of the same.

Nicholson, Ch.: "Thus if the tax on animals be a fixed sum per head * * there is nothing the owner can do which can affect the amount to be collected from him."

English vs. Wilmington, 2 Marv. 63 at 92. (yr. 1894)

Appeals to be made to Finance Committee of Council.

Any person who has been improperly assessed shall have the right to appeal from the same to the Finance Committee, and if upon appeal it shall appear that the assessment has been made against the wrong person the Finance Committee shall cause the assessment to be made against the proper person.

Assessment, when to be completed.

The assessment shall specify the color and kind of animal, whether male or female, and shall be completed by the first day of June; and the list shall remain open for inspection and correction until the first day of July, when the same shall be sent to City Auditor for collection.

Act of April 11, 1883.

Collection of tax.

SEC. 2. It shall be the duty of the [Assessors and Collectors] to immediately collect all such assessments, and pay the money into the city treasury as other moneys are collected and paid in by him, and he shall keep a separate account of the same.

Receipts.

The [Assessors and Collectors] shall procure books of receipts marked "original" and "duplicates," the original receipt shall be given to the person paying the tax, the duplicate to remain in the book. Upon the sale of any animal within the year for which such tax is paid the receipt may be transferred to the purchaser, and shall be evidence that the tax is paid for the year specified in the receipt.

Penalty for concealing animals.

SEC. 3. Any person concealing any such animals, or by any fraud or artifice attempting to evade the assessment and collection of the tax upon any such animal, shall, for every such offence, forfeit and pay a fine of ten dollars, to be recovered before the [Municipal Court] for the use of the city.

Refusal to pay tax.

SEC. 4. Upon the refusal or neglect of any person to pay any such assessment for the space of sixty days after demand therefor by the [Assessor and Collector], it shall be the duty

of the [Judge of the Municipal Court] to issue a warrant directed to the [Assessor and Collector], who shall immediately levy upon any such animal or animals; or if such animal or animals cannot be found, then upon any other goods and chattels of the delinquent, and upon five days' notice in a newspaper of this city he shall sell the same at public auction, and after deducting the amount of tax due, with the interest thereon, and all cost, he shall deposit the residue in the National Bank of Delaware to the credit of such delinquent, taking a certificate from the cashier of such deposit, which certificate he shall keep on file in his office. Act of April 11, 1883.

Passed at City Hall, May 1, 1879.

AN ORDINANCE authorizing the levying and collection of taxes upon telegraph, telephone and electric light poles, and other erections of a like character, within the limits of the City of Wilmington.

* * * * * * * * * *

Supplied by amendment to Sec. 80 of City Charter, Act of March 25, 1907. 24 D. L. 353.

CHAPTER XVIII

STREETS.

		Page
1.	Extending Broad (Seventh) Street	932
2.	Erection of Fences	933
3.	Regulating the Width of Streets	935
4.	Ascents and Descents of Certain Streets	935
5.	Streets Laid Out and Lists of Same	939
6.	Ascents and Descents of Market Street	942
7.	Changing Names of Certain Streets	942
8.	Changing Name of Pasture Street	943
9.	Changing Name of Kennett Road	943
10.	Manner of Filling Excavations	944
11.	Vacating Part of West Eleventh Street	945
12.	Vacating Part of Monroe Street	945
13.	Vacating Part of Orange Street	945
14.	Vacating Part of Madison Street	946
15.	Vacating Part of West Tenth Street	946
16.	Vacating Washington Street Below Front	946
17.	Changing Name of Mill Street	947
18.	Changing Name of Franklin Street	947
19.	Widening Ninth Street Between Market and Shipley	948
20.	Widening King Street Between Second Street and the Christiana River	948
21.	Protecting Street Pavers.	948
22.	Vacating Part of Fifth Street	948
23.	Vacating Parts of Walnut, Spruce and Second Streets	949
24.	Providing for Danger Signals Upon the Streets	949
25.	Changing the Spelling of Hazlet Street	951
26.	Locating Haslet Street	950
27.	Protection of Center Stones	951

AN ORDINANCE for regulating pavements, posts and gutters, and extending Broad street to the road leading through Brandywine marsh.

* * * * * * * * * *

WHEREAS, Broad street is already extended in the plan of the borough to the westerly side of the King's road, leading from Brandywine bridge to Christiana ferry, and is already opened from thence to the Swedish Church burying ground.
* * *

Be it enacted, That Broad street shall be extended from its present termination of the west side of said road in its width forty-nine feet, and in the course of said street about south fifty-eight degrees east for about thirty-four perches until it comes to the line of the Swedish Church lot; from thence, beginning on the easterly side of said Broad street as thus extended, and continuing its aforesaid breadth of forty-nine feet along the north side of the line of the aforesaid church lot for about eleven perches and a half until it reaches to the easterly extremity of said lot; thence, continuing said breadth south sixty-two and a quarter degreees east about forty perches until the middle of said street adjoins the middle of the aforesaid Marsh road, on the northerly side of John Erwin's marsh. Broad street (now Seventh) extended.

And be it further enacted, That the said Broad street as herein extended, and Marsh street as hereinafter nominated, shall at all times and on every occasion forever hereafter be deemed, construed and taken as a public street in this borough to all intents and purposes whatsoever, and that from the first turn at the north side of the church lot the same street shall on all occasions forever hereafter be nominated Marsh street. To be a public street. Name of part of street.

Passed September 12, 1772.

AN ORDINANCE to prevent encroachments being made on any of the streets or public highways within this borough, and for removing those already thereon, and for other purposes therein mentioned.

Whereas, Pursuant to an order of the Burgesses and assistants of this borough there was a resurvey made of the bounds thereof, and also of all the streets and highways within the same, and the situation and direction of the said streets and public highways ascertained by red cedar posts and stones fixed in the earth in the centre or middle of said streets respectively, where they cross each other, with the names and width of said streets ascertained, to wit: Water street thirty-three feet broad; Front street to the westward of Market street at sixty feet broad; High street at eighty-two feet six inches broad; Queen street at fifty-four feet broad; Wood Preamble.

street at thirty-three feet broad. All the other streets extending westward and eastward, to wit: Front street, Second street, Third street, Hanover street, Broad street, Kent street, Chestnut street and Elizabeth street at forty-nine feet broad. Walnut street and King street to the northward of Second street and Market street at sixty-five feet six inches broad; French street at seventy-three feet six inches broad; King[1] street to the southward of Second street at thirty-three feet broad; Thorn street at forty-five feet broad; Orange street at forty-nine feet six inches broad, and all the other streets extending southward and northward, to wit: Shipley street, Tatnall street, West street, Pasture street and Justison street at forty-nine feet broad. Which said resurvey was by order of the Burgesses and assistants signed by John Stapler, Esquire, Griffith Minshall and William Poole, gentlemen, and was afterwards confirmed by an Act of General Assembly of this government, passed the thirteenth day of June, Anno Domini, one thousand seven hundred and seventy-two. Notwithstanding which, and the constant care of the Regulators or Surveyors of the said streets to prevent it, divers persons have made encroachments on the said streets by including some parts thereof within their enclosures to the evil example of others.

* * * * * * * * * *

Erection of fences.

Be it enacted and ordained, by the authority aforesaid, that any person or persons intending at any time hereafter to erect any fence or fences on any of the streets or public highways within this borough, before such fence shall be put up,

Surveyors to direct where fence shall be set.

he, she or they shall apply to one of the Regulators or Surveyors for the time being, and take his direction where to set said fence, and set the same accordingly, and for refusing or neglecting so to do for every such offence, forfeit and pay any

Penalty for violation.

sum not exceeding fifty pounds, at the discretion of the Burgesses for the time being or either of them, to be collected and recovered as aforesaid.

Passed May 9, 1780.

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1. Changed south of Second street to 65 feet 6 inches broad, August 6th, 1866.

[1]*AN ORDINANCE regulating the width of streets in the City of Wilmington.* Ordinance, Aug. 16, 1894.

BE IT ORDAINED, by the Mayor and Council of Wilmington.

SECTION 1. That from and after the passage of this ordinance no street hereafter to be opened shall be accepted or placed upon the plans of the City of Wilmington that is less than forty feet in width, and in no case shall a street be accepted or placed upon the plans of said city unless it shall run from one public street to another in a straight line. No street shall be placed upon the plans of city that is less than 40 feet in width.

SEC. 2. It shall be unlawful for the Building Inspector or the Department of Engineering and Surveying either to issue or cause to be issued any permit for the erection of any building or buildings, or to survey, or give lines, or authorize, or permit the erection of any building or buildings fronting on any street unless said street shall be of not less than forty feet in width, as provided in Section 1 of this ordinance, or on the city plan, and all of said streets shall be continuous and run in a straight line from one public street to another. Unlawful for Building Inspector to permit the erection of buildings.

All ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.

AN ORDINANCE to establish the regulation of the ascents and descents of the streets, lanes and alleys within the Borough of Wilmington, and for other purposes. [2]

WHEREAS, By an Act of the General Assembly of the State of Delaware, passed in the year seventeen hundred and ninety-nine, entitled, "An Act for the better regulation of the Borough of Wilmington," amongst other things it is provided "that it shall and may be lawful for the Burgesses and assistants of said Borough, and they are hereby authorized and empowered, when in their discretion they shall deem it proper 3 D. L. 56.

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1. See Act of April 20, 1887, 18 D. L. p. 352 for powers of Street and Sewer Department, on p. 224 this volume.

2. This ordinance is printed for reference, although some of its provisions have been changed or are obsolete. It is the ordinance referred to in Sec. 124 of the Charter.

and right so to do, from time to time, on application of any five resident freeholders of the said Borough, to issue their precept to any suitable person or persons, authorizing him or them to cause the footways and gutters of any street, lane or alley of the said Borough, as applied for, to be paved with bricks or stones, as the case may require, and to fix plank or curb stones to prevent the same from being injured by carriages, agreeably to the true regulation of the streets, lanes and alleys of the said Borough;" and

See Act Jan. 24, 1801, 3 D. L. 160-167. Act of Jan. 23, 1806, 4 D. L. 8.

WHEREAS, No regulation of the said streets, lanes and alleys of the said Borough hath as yet been established, shewing the ascents and descents of the said streets, lanes and alleys, and the relative situation thereof one with another, whereby the provisions in the aforesaid recited act cannot be legally performed or complied with; and

WHEREAS, The regulators of the streets, etc., for the time being, have exhibited a ground plan of the said Borough, noting the degrees of ascent and descent of the several streets, lanes and alleys, and the relative situation of each of them; which plan and regulation being examined and maturely considered by the present Burgesses and assistants, and by them approved:

Regulation of streets.

SECTION 1. *Therefore, be it ordained,* by the freemen, resident inhabitants of the Borough of Wilmington, in general town meeting legally called and met; that from and after the passing of this ordinance, the aforesaid regulation of the streets, etc., beginning at a large stone in the centre of Market and Chestnut streets and from thence to the centres of the several streets, etc., where they cross each other at right angles, showing the degrees of elevation and descent of the several streets, etc., and their relative situation to each other, a plan whereof, together with explanatory notes of the particular ascents and descents of the several streets, etc., from the said large stone in Market and Chestnut streets, is deposited in the archives of this borough, and a copy of the aforesaid explanatory note is attached to this ordinance, the same shall be and is hereby declared to be the true regulation of the streets, lanes

Plan.

and alleys of the Borough of Wilmington, and at all times hereafter shall be deemed and taken as such.

Footways and pavements, width of.

SEC. 2. *And be it ordained,* by the authority aforesaid, that the footways and pavements of the several streets, lanes and alleys within the city shall be, when paved, of the following width from the true range and extreme limits of each street to the outside of the curb, that is to say: King street from the south side of Second street, Wood street and Water street, shall have their pavements of the width of six feet and no more; and all those streets, lanes or alleys which are forty-nine feet in width shall have their pavements twelve feet wide and no more; and all those streets, lanes and alleys which are of a greater width than forty-nine feet shall have their pavements twelve feet and nine inches wide and no more, except on High street from Market street to Pasture street, the pavement whereof shall be twelve feet wide and no more, in order to accommodate the Market House whenever it may be necessary to extend it; and all footways and pavements, twelve feet wide and upwards, shall ascend from the curbstone to the true building line at the ratio of half an inch to each foot and no more.

King street widened, see ordinance of Aug. 16, 1866.

Wood (Ninth) street widened and extended by ordinances of Jan. 21, 1865 and June 7, 1866.

Bottom of gutters.

Width of.

SEC. 3. *And be it further ordained,* that the bottom of the gutters in all the streets, lanes and alleys within this borough, of forty-nine and a half feet wide and under, shall be ten inches below the centre of said streets, lanes and alleys; and that the bottom of the gutters in all the streets, lanes and alleys within the said borough, which exceed forty-nine feet and six inches in width, shall be twelve inches below the centre of said streets, etc., and no more; *provided,* that this rule be not considered to be rigidly observed in the several streets running easterly and westerly which are necessarily by the plan of regulation higher on one side than the other, but that the regulators for the time being be enjoined to conform to it as nearly as circumstances may admit.

Curbs to protect footways from carriages.

SEC. 4. *And be it further ordained,* by the authority aforesaid, that the curbs of wood or stones placed to support the edges of footways or pavements from the gutters, and to

protect the same from carriages, etc., in the several streets leading from Chestnut street to High street, shall be of the height of eight inches from the bottom of the gutters, and in the same streets, from High street to Water street, the curbs shall be of the height of ten inches from the bottom of the gutters and no more; and all the streets running at right angles and crossing the aforesaid streets leading from Chestnut to Water street, shall have their curbs elevated six inches above the bottom of the gutter and no more.

Height of curbs.

Size of stoops, porches, steps and cellar doors.

SEC. 5. No stoop, porch (*a*) or steps (*b*) to ascend into any building now erected, or hereafter to be erected, adjoining any of the streets, lanes or alleys of this borough, nor any doors or other inlets into cellars now erected, or hereafter to be erected, shall extend further from the front or line of building and erecting houses than three feet and three inches on Water street, Wood street and King street, to the south side of Second street; and in all other streets, lanes and alleys within this borough, the said steps, porches, cellar doors (*c*) or other inlets to the respective buildings thereon erected, or hereafter to be erected, shall not extend on the pavements from the true line for building further than four feet.

(*a*) The resolution of the Street and Sewer Department, passed February 28th, 1893, did not repeal this section, because the resolution attempting the repeal was not passed in conformity with Section 30 of the Charter.

Mayor and Council of Wil. vs. McNabb (1906), Munic. Ct. Decision final.

(*b*) A property owner is not liable to one who may be injured by running into, or falling over, *door-steps* within the limitations of the Ordinance.

Lore, C. J.: "The pavement or footways from building line to curb are usually appropriated to foot passengers. The whole width of that footway is for their use, subject only to such limitations as the city government and State law may prescribe. Such as the right of owners or occupiers of abutting properties to place thereon * * *door-steps* running out a certain distance into the pavement, for the purpose of ascent or descent into the dwellings or buildings thereon," &c. "Some of these, like *doorsteps* * * are permanent and so obvious, that any danger therefrom is manifest, and every one is bound to take notice of them at his peril."

Louth vs. Thompson, 1 Penn. 149 at 156. (yr. 1897)

The same law applies to stepping stones, hitching posts and awning posts.

(*c*) *Lore, C. J.*: One has "a right to open his cellar doors and to keep them open, so as to meet the reasonable con-

venience and necessities of his business, but he'' has ''no right to leave them open and exposed while they were not so in use, without proper protection and warning to persons traveling on the sidewalk. (157) * * The mere fact that the accident happened, or that the cellar door was open, are not in themselves, evidence of negligence, but it would be negligence if it was left open and unprotected to the danger of the lawful foot traveler.''

Louth vs. Thompson, 1 Penn. 149 at 158. (yr. 1897)

Passed May 10, 1800.

AN ORDINANCE to establish and confirm a plan of divers new streets in the Borough of Wilmington, now laid out and planned by the regulators of this borough, under the direction of a committee appointed by the Burgesses and assistants of the corporation, together with an extension of sundry old streets in the said borough.

* * * * * * * * * *

See Act of General Assembly, 1772.

Preamble.

WHEREAS, A considerable portion of the lands within the limits of this borough have hitherto had no streets laid out or extended through them, and it being considered of importance to the owners of such lands (especially those who may now or soon incline to build and improve their said lands) that they should know where and in what manner all and any street will in future be likely to pass through or intersect each other in their respective lands, for the purpose whereof the present regulators of the streets, etc., in this borough, have by the direction of the Burgesses and other officers of the corporation, made a plan of the said borough, exhibiting all the public streets that are actually opened and occupied as such in the said borough, and as well divers new streets by them now laid out, together also with the extension of a number of the old streets, and have exhibited the said plan for the consideration of the citizens, of this borough, and which has been by them approved;

New streets.

Therefore be it ordained, by the freemen, resident inhabitants of the Borough of Wilmington, in general town's meeting legally called and assembled, that from and after the pass-

ing of this ordinance, the aforesaid new streets, together with the extensions of the former streets, so laid out as aforesaid, and now exhibited as above mentioned (a plan whereof, with the explanatory notes, is deposited in the archives of this borough, and a copy of the said explanatory notes is attached to this ordinance), shall be and is hereby declared to be the true plan of the aforesaid new streets, and of the extensions of the former streets in the said Borough of Wilmington, so far as they are laid out, or extended and exhibited on the aforesaid plan, and shall at all times hereafter be deemed and taken as such.

Plan.

Passed at Town Hall, 1st mo. 21st, 1805.

NOTE 1.—The following is a list of the streets referred to in the above ordinance and designated on the plan mentioned therein, with the distances of the streets from each other and from the ancient streets.

Jefferson street.

Jefferson street, at 50 feet in breadth, laid parallel to and at the distance of 300 feet from Pasture street at 49 feet wide.

Madison street.

Madison street, at 50 feet in breadth, laid parallel to and at the distance of 300 feet from Jefferson street.

Dickinson street.

Dickinson street, at 50 feet wide, laid parallel to and at the distance of 300 feet, 3 inches from Elizabeth street.

Franklin street.

Franklin street, at 50 feet wide, parallel to and at the distance of 299 feet, 9 inches from Dickinson street, ——— from Washington street which runs parallel thereto, and is 50 feet in breadth.

Poplar street.

Poplar street, 50 feet in breadth, extending from Christiana to Brandywine, laid parallel to, at the distance of 342 feet from Walnut street at 65 feet, 6 inches wide.

Lombard street.

Lombard street, at 50 feet wide, laid parallel to and at the distance of 300 feet from Poplar street.

Pine street, at 50 feet wide, laid parallel to and at the distance of 300 feet from Lombard street. Pine street.

Spruce street, at 50 feet wide, laid parallel to and at the distance of 335 feet 10 inches from Pine street. Spruce street.

Church street, at 50 feet wide, laid parallel to and at the distance of 335 feet 10 inches and a half from Spruce street. Church street.

Dock street, at fifty feet wide, laid parallel to and at the distance of 278 feet from Front street, at 60 feet wide, and extending from Orange street to Newport road. Dock street. (See Act 11 D. L. 145.)

Wood street, extended in breadth from 33 feet wide to 49 feet in breadth. Wood street.

Front, Second, Third, High, Queen, Hanover, Broad, Kent, Wood, Chestnut, Elizabeth, Washington, Stidham, and Mill streets extended to the northwest line of the borough. The same, as well as the new streets running parallel thereto, all extended to the southeastward to Christiana, to Church street and to Brandywine creek. Other streets.

NOTE 2.—Up to December 31st, 1835, the streets crossing the city from east to west, north of Third street, were named in the order herein stated, to wit: High, Queen, Hanover, Broad, Kent, Wood, Chestnut, Elizabeth, Dickinson, Franklin, Washington, Stidham and Mill street. At that date by ordinance the names of the streets aforesaid, except Mill street, were changed as follows, to wit: High was changed to Fourth, Queen to Fifth, Hanover to Sixth, Broad to Seventh, Kent to Eighth, Wood to Ninth, Chestnut to Tenth, Elizabeth to Eleventh, Dickinson to Twelfth, Franklin to Thirteenth, Washington to Fourteenth, Stidham to Fifteenth; and by ordinance of July 26th, 1860, Mill street was changed to Sixteenth street; and by ordinance of July 24th, 1862, Franklin street, between Front and Second streets, and between Jefferson and Madison streets, was changed to Christiana street. Names of cross streets. Names changed Dec. 31, 1835. July 26, 1860. July 24, 1862.

AN ORDINANCE for fixing and establishing the ascent and descents of Market street from Chestnut street to Washington street, and for fixing and establishing the distance from the centre of Chestnut to the centre of Elizabeth.

SECTION 1. * * * * * * * *

And be it further ordained, That from and after the passage of this ordinance the overplus or gain in distance of four feet six inches, discovered upon exact measurement of the square from the centre of Chestnut street to the centre of Elizabeth street in Market street, be and the same is hereby attached to the former measurement of said square, and that the distance from the centre of Chestnut street to the centre of Elizabeth street is and hereafter shall be three hundred and twenty-nine feet eleven inches, any ordinance heretofore passed to the contrary notwithstanding.

Distance from Tenth street to Eleventh street.

Passed at Town Hall, March 2, 1812.

AN ORDINANCE to change the names of certain streets within the city.

SECTION 1. *Be it ordained,* by the City Council of Wilmington, that the street now known by the name of High street shall from and after the passage of this ordinance be styled and called Fourth street.

That now called Queen street shall be called Fifth street.

That called Hanover shall be called Sixth.

That called Broad shall be called Seventh.

That called Kent shall be called Eighth.

That called Wood shall be called Ninth.

That called Chestnut shall be called Tenth.

That called Elizabeth shall be called Eleventh.

That called Dickinson shall be called Twelfth.

That called Franklin shall be called Thirteenth.

That called Washington shall be called Fourteenth.

That called Stidham shall be called Fifteenth.

SEC. 2. *And be it further ordained,* by the authority aforesaid, that wooden labels with the names of the streets painted on them so as plainly to be distinguishable shall be put up on at least two of the corners that are now or shall hereafter be improved diagonally at every intersection of the said streets with Market street, the one on the east side of Market street to have the word East prefixed to the name of the crossing street, and that on the west side to have the word West prefixed to the name of the crossing street in like manner. Label for names of streets.

SEC. 3. *Be it ordained,* by the authority aforesaid, that any person or persons who shall take down, remove, deface or in any manner destroy the said labels or boards shall for every such offence forfeit and pay a fine of ten dollars. Penalty for removing labels.

Passed at City Hall, December 31, 1835.

AN ORDINANCE to change the name of Pasture street to Washington street.

SECTION 1. *Be it ordained,* by the City Council of Wilmington, that the street now known by the name of Pasture street shall from and after the passage of this ordinance be styled and called Washington street.

Passed at City Hall, March 12, 1846.

AN ORDINANCE to change the name of the Kennett road within the limits of the city.

Be it ordained, by the City Council of Wilmington, that such portion of the Kennett road as extends from Tatnall street northerly to the city line, shall hereafter be styled and called Delaware avenue. 12 D. L. 624.

Passed at City Hall, April 22, 1847.

AN ORDINANCE defining the duties of the Superintendent of the Water Works, and of the Gas Company, or the Superintendents or Agents of the latter.

Regulations for excavation for gas or water pipes.

SECTION 1. From and after the passage of this ordinance, it shall be the duty of the superintendent of the water works, or the superintendents or agents of the gas company, in making any excavation in the streets, lanes or alleys of the city, for the purpose of laying down water or gas pipes, to replace the earth by ramming, (*a*) or by introducing water, or by both, so as to make it as solid and firm and as secure to travel over as the adjacent part of said street, lane or alley.

(*a*) The city should see that the street beds are properly rammed, or it will be liable in damages to one injured by default thereof. See the cases of

Kent vs. Mayor and Council Wil., 7 Houst., p. 397 at 398. (yr. 1886) and

Schelich vs. Mayor and Council Wil., 1 Boyce, p. 57. (yr. 1909)

Regulations respecting pavements taken up.

SEC. 2. When any excavation is made for the purpose mentioned in the first section of this ordinance in any street, lane or alley which may be paved, or across any paved footway within the limits of the city, it shall be the duty of the superintendent of the water works or the superintendents or agents of the gas company, as the case may be, to cause the earth to be replaced as soon as the work is completed, as required in the first section of this ordinance, and to replace the pavement, whether it be in a street, lane or alley, or crossing a footway, in the same situation it was in before taking up.

Violations.

SEC. 3. For every violation of the provisions of this ordinance the superintendent of the water works, or the superintendent or agents of the gas company, as the case may be, shall forfeit and pay a fine of not less than ten dollars, to be recovered in the Municipal Court, by action of debt, or otherwise.

Penalty.

Street Commissioner to report violations.

SEC. 4. It shall be and is hereby made the duty of the Street Commissioner hereafter to report forthwith to the Mayor of the city any violation of the provisions of this ordinance.

Passed at City Hall, January 13, 1848.

AN ORDINANCE relating to a part of West Eleventh street.

Be it ordained, by the City Council of Wilmington, that Eleventh street as laid down on the plan of the said City of Wilmington, between Madison street and the city line on the west, be and the same is hereby vacated; and that so much of the ordinance, "to establish and confirm a plan of divers new streets, and to regulate the ascent and descents of the same," passed October, 1847, as relates thereto be and the same is hereby repealed.

See Act vacating a part of Eleventh street, Feb. 18, 1851. Vol. 10, 510.

Passed at City Hall, December 28, 1848.

AN ORDINANCE relating to a part of Monroe street.

WHEREAS, Edward W. Gilpin, by his memorial, has presented to Council his intention to improve his property on Delaware avenue, between Madison street and the Kings road; now, therefore, to make him so to do,

Preamble.

SECTION 1. *Be it ordained*, by the City Council of Wilmington, that Monroe street, as laid down on the plan of the said City of Wilmington, between Tenth street and Delaware avenue, be and the same is hereby vacated; and that so much of an ordinance entitled, "An ordinance to establish and confirm a plan of divers new streets in the City of Wilmington, now laid out and planned by the regulators of said city, together with the extension of sundry old streets in said city; also to regulate the ascents and descents of the streets therein mentioned," passed September 2, 1847, as relates thereto, be and the same is hereby repealed, made null and void.

Monroe street, part thereof vacated.

Passed at City Hall, February 6, 1851.

AN ORDINANCE relating to part of Orange street.

SECTION 1. *Be it ordained*, by the City Council of Wilmington, that Orange street, as laid down on the plan of the said city, between Fourteenth street and the Brandywine creek, be and the same is hereby vacated, any law or ordinance

See Act Feb. 10, 1855, Vol. 11, 198.

Orange street, part of, vacated.

to the contrary notwithstanding. *Provided, nevertheless,* that the said city hereby expressly reserves to itself the right to have and maintain for all time to come a sufficient sewer, trunk or gutter in the line or direction of said Orange street through the lands of Alfred Lee, D. D., to carry off the water from said Orange and Fourteenth streets to the Brandywine creek aforesaid.

Passed at City Hall, July 8, 1852.

AN ORDINANCE vacating part of Madison street.

Vacated Feb. 3, 1853. 11 D. L. 26.

Madison street, part of, vacated.

SECTION 1. *Be it ordained,* by the City Council of Wilmington, that Madison street, as laid down on the plan of the said city, from Twelfth street to the line of the grounds of the Wilmington and Brandywine Cemetery Company, be and the same is hereby vacated, any law or ordinance to the contrary notwithstanding.

Passed at City Hall, October 28, 1852.

AN ORDINANCE relating to a part of West Tenth street.

SECTION 1. *Be it ordained,* by the City Council of Wilmington, that Tenth street, as laid down on the plan of the City of Wilmington, between Tatnall and West streets, be and the same is hereby vacated, and that so much of the ordinance, "to establish and confirm a plan of divers new streets, etc., to regulate the ascents and descents of the same," passed October, 1847, as relates thereto, be and the same is hereby repealed, made null and void.

Vacated Jan. 12, 1855. 11 D. L. 144.

Passed at City Hall, June 23, 1853.

AN ORDINANCE vacating Washington street between Front street and the Philadelphia, Wilmington and Baltimore Railroad.

Vacated Jan. 17, 1855. 11 D. L. 161.

SECTION 1. *Be it ordained,* by the City Council of Wilmington, that Washington street as laid down on the plan of the city, between Front street and the Philadelphia, Wilming-

ton and Baltimore Railroad, be and the same is hereby vacated, any ordinance to the contrary notwithstanding; *provided, nevertheless*, that the right and power is reserved to the said city of constructing and maintaining through and across said portion of Washington street hereby vacated, and in the direction of said street, a sewer, trunk or gutter sufficient to carry off the water of the said Washington street, or the water that may accumulate at the intersection of Washington street with Front street. Proviso.

Passed at City Hall, October 30, 1854.

AN ORDINANCE to alter the name of Mill street in this city.

SECTION 1. *Be it ordained,* by the City Council of Wilmington, that the street now known by the name of "Mill street" shall from and after the passage of this ordinance be styled and called Sixteenth street, and that the labels now marking said street shall be changed accordingly.

Passed at City Hall, July 26, 1860.

AN ORDINANCE to establish and confirm a plan of divers new streets in the City of Wilmington, including Broome street, and streets west of Broome street, and other new streets south of Dock street, and also to change the name of Franklin street.

SECTION 1. * * * * * * * * *

SEC. 2. * * * * * * * * * *

SEC. 3. And that a small street between Front and Second streets, and running from Jefferson street to Madison street, now known as Franklin street, shall hereafter be styled Christiana street. Christiana street.

Passed at City Hall, July 24, 1862.

AN ORDINANCE to widen Ninth street, between Market and Shipley streets.

SECTION 1. *Be it ordained,* by the City Council of Wilmington, that Ninth street, between Market and Shipley streets, be widened to the same width as said Ninth street is east of Market street.

Passed at City Hall, June 7, 1866.

AN ORDINANCE for widening of King street, between Second street and the Christiana river.

SECTION 1. That hereafter King street, from Second street to the Christiana river, shall be the same width, and the building lines of the same shall be in a straight line with King street above Second street.

Passed at City Hall, August 16, 1866.

AN ORDINANCE to protect the street pavers from annoyance by removing protection poles when placed across any street while there are public improvements going on.

Interfering with protection poles.

SECTION 1. A fine of five dollars shall be imposed on any person or persons who may interfere with or displace any protection poles placed at the end of streets, or any other place, that persons performing public work for the City of Wilmington may erect while such public work is being done.

Passed at City Hall, June 4, 1869.

AN ORDINANCE relating to a part of Fifth street.

Part of Fifth street vacated.

SECTION 1. *Be it ordained,* by the Council of Wilmington, that Fifth street as laid down on the plan of the city, between the Philadelphia, Wilmington and Baltimore Railroad and low water mark on the Christiana river, be and the same is hereby vacated, any law or ordinance to the contrary notwithstanding; *provided, nevertheless,* that the city hereby expressly reserve to itself the right to have, open, lay, construct, maintain, cleanse and repair a sufficient sewer, drain, trunk

City reserves certain rights.

or gutter in the line or direction of said Fifth street through the lands of owners of said part of Fifth street hereby vacated.

SEC. 2. *And be it further ordained,* That the General Assembly of Delaware be and the same is hereby respectfully requested to pass at its present session an Act confirming and establishing the first section of this ordinance. See 14 D. L. 569.

Passed at City Hall, March 7, 1873.

AN ORDINANCE vacating parts of Walnut, Spruce and Second streets.

SECTION 1. That Walnut street, between Front street and Water street, Spruce street, between Robinson street and Front street, and Second street, between Pine street and Church street, as the same are laid down on the plan of said city, be and the same are hereby vacated, any law or ordinance to the contrary notwithstanding, to and for the following intent, use and purposes, to wit: the occupation and erection thereon by the Philadelphia, Wilmington and Baltimore Railroad Company of a suitable building or buildings for a depot, round-house and other purposes incident to and necessary for the accommodation of said Philadelphia, Wilmington and Baltimore Railroad Company in this city. Parts of Walnut street, Spruce street and Second street vacated. The P., W. & B. R. R. Co. to erect depot thereon.

Passed at City Hall, February 15, 1877.

AN ORDINANCE providing for the placing of danger signals and safeguards upon the streets of this city. Danger signals on streets where excavations are made therein.

SECTION 1. That from and after the passage of this ordinance all contractors and builders who shall have received permission to make excavations on any portion of the public streets, shall place at each end * * * * excavation a red lantern[1] plainly exposed as a danger signal, [said red lantern to be lighted and kept burning] from sunset to sunrise, and Resolution, Street and Sewer Department adopted July 19, 1892, infra. Red lantern at night.

1. See Resolution of Street and Sewer Department passed Feb. 1, 1898, p. 1002 of this volume. See also Sec. 34 of Resolution of March 26, 1901, p. 1052 of this volume.

Ordinance Nov. 2, 1882.

shall further surround and enclose such * * * * excavations with proper safeguards so that the same shall be secure from accident. (a) [And it shall be the duty of the Street Commissioner, upon information, being given him by any reliable person, that any such builder or contractor has neglected or refused to place such danger signals and safeguards where the ordinance requires the same to be placed by such builder or contractor, to without delay notify such builder or contractor to immediately comply with the full requirements of this ordinance; and in the event of a further failure or neglect of any such builder or contractor to comply with the provisions of this ordinance, after having received due notice from the Street Commissioner as aforesaid, it shall be the duty of the Street Commissioner to lodge information of such violation against the party who has violated the provisions of this ordinance without delay to the Municipal Court of the city, whose duty it shall be to bring the party so complained of for the violation of the provisions of this ordinance, and upon conviction, the party so offending shall forfeit and pay a fine of ten dollars.] (b)

Duty of the Street Commissioner to enforce this ordinance.

Penalty for violation.

(a) See the reference made to this ordinance by the attorney in the case of
Kent vs. Mayor and Council Wil., 7 Houst. 397 at 398. (yr. 1886)

(b) The city, however, should endeavor to see that contractors comply with the ordinance, and take bonds of indemnity from them to protect the city in case of damage suits; for, in case of injuries received through the negligence of the contractor the *city would be liable,* though it could look to the contractor afterwards.
(See p. 979 of this volume.)

SEC. 2. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

Passed at City Hall, March 24, 1882.

AN ORDINANCE to locate and establish Haslet street.

SECTION 1. That Haslet street shall be fifty feet (50 ft.) wide, and extend from Adams to Jackson street; that the center line of [Haslet] street shall be two hundred and fifty-seven feet two and seven-eighths inches (257 ft. $2\frac{7}{8}$ in.) from the centre line of Delaware avenue, measured on the centre

Laid out 50 feet wide from Adams to Jackson street.

line of Adams street; and two hundred and eighty-six feet seven inches and twenty-nine thirty-seconds of an inch (286 ft. 7 29-32 in.) measured on the centre line of Jackson street, from the said centre line of Delaware avenue.

SEC. 2. That all ordinances and parts of ordinances inconsistent herewith are hereby repealed.

Passed at City Hall, October 5, 1882.

AN ORDINANCE to change the manner of spelling the name of Hazlet street.

SECTION 1. That the manner of spelling Hazlet street be changed by striking out the letter "z" in the word Hazlet, and in lieu of the letter so stricken out, the letter "s" be and the same is hereby inserted.

Passed at City Hall, April 12, 1883.

AN ORDINANCE for the protection of centre stones.

SECTION 1. That no private party or parties in making excavations for any purpose whatever in any street of this city, shall come nearer than one foot and six inches (1 ft. 6 in.) to the nearest part of any centre stone. Excavations not to approach centre stones.

SEC. 2. That any party or parties violating the provisions of this ordinance shall be liable in the sum of fifty dollars, to be recovered in the same manner as penalties of like amount are now or hereafter may be by law recoverable, said fine to be paid into the city treasury. Penalty.

Passed at City Hall, November 26, 1886.

CHAPTER XIX.

MISCELLANEOUS.

		Page
1.	Regulating Carriage Stand for the P., B. & W. Station	953
2.	Regulating Sales of Ice	953
3.	Regulating Sales of Corn Meal	953
4.	Regulating the Height of Certain Signs	954
5.	Regulating Auctions and Auctioneers	954
6.	Regulating the Time and Manner of Payment of City Bills	957
7.	Regulating the Printing of Private Ordinances	958
8.	Regulating Licenses to Shows	959
9.	Providing Licenses for Places Exhibiting Moving Pictures	960
10.	Regulating the Storing and Sale of Gunpowder	962
11.	Prohibiting the Making, Selling, Firing Off, &c., of Certain Fireworks	964
12.	Regulating the Keeping and Storing of Petroleum and Other Oils	966
13.	Prohibiting the Boiling of Tar, &c.	966
14.	Prohibiting Damage to Public Lamps	967
15.	Protection of Public Lamps	968
16.	Prohibiting Damage to Shrubbery, &c.	968
17.	Protecting Trees	969
18.	Prohibiting Lottery Policy Offices	970
19.	Protection of Public Drinking Fountains	970
20.	For the Prevention of Cruelty to Animals	971
21.	Providing for the Muzzling of Dogs	972
22.	Registration of Dogs and Appointment of Dog Catcher	975
23.	Authorizing the Killing and Removal of Unregistered Dogs	977
24.	Providing Contracts for City Work in Excess of $50	978
25.	Providing for Security of Contractors	979
26.	Preventing the Pollution of Brandywine Creek	980
27.	Providing for the Purchase of Land for Brandywine Park	981
28.	Providing for the Purchase of Land for Brandywine Park	982
29.	Providing for the Purchase of Land for Kirkwood Park	983
30.	Requesting the Mayor to Execute a Contract with the Wilmington Institute	984
31.	Providing for an Additional Appropriation for Wilmington Library	985
32.	Right of Way of Ambulances	986
33.	Directing the Method of Making Certain Deposits by Assessors and Collectors	986
34.	Requiring the City Treasurer to Publish Statements of the Receipts and Expenditures of the City.	987
35.	General Appropriation Ordinance for Fiscal Year of 1909-10	989

AN ORDINANCE fixing the stand for carriages and horses attending at the Philadelphia, Wilmington and Baltimore Railroad.

Stands for carriages at P., W. & B. R. R. depot.

SECTION 1. The stand for carriages and horses attending at the Philadelphia, Wilmington and Baltimore Railroad within this city, shall be * * * on * * [west * * French street from railroad to the southerly side of Front street.]

Amendment of May 27, 1887.

Resolution of Street and Sewer Department, April 20, 1897.

SEC. 2. If the owner or owners of any carriage or carriages, horse or horses, shall permit any such carriage or horse attending said road to stand in any other place than is mentioned in the first section of this ordinance, he, she or they so offending, shall be deemed guilty of a common nuisance, and shall forfeit and pay for the first offence the sum of one dollar, and for every subsequent offence the sum of two dollars, to be recovered before the [Municipal Court.]

Penalty for occupying unlawful stand.

Passed at City Hall, October 3, 1839.

AN ORDINANCE regulating the sale of ice by weight.

SECTION 1. From and after the passage of this ordinance ice shall be retailed within this city by weight, and not less than at the rate of seventy-two pounds per bushel; and any person or persons selling or retailing ice by the bushel or bushels at a weight less than seventy-two pounds for each and every bushel, or if the quantity sold be less than a bushel, if such quantity be not in the proportion of seventy-two pounds per bushel, each and every person so offending, upon conviction thereof before the [Municipal Court] shall forfeit and pay a fine of one dollar.

Sale of ice by weight.

72 lbs. to bushel.

Passed at City Hall, June 18, 1846.

AN ORDINANCE regulating the sale of corn meal by weight.

SECTION 1. From and after the passage of this ordinance corn meal shall be sold or retailed within this city by weight, and not less than at the rate of forty-eight pounds to the bushel and any person or persons selling or retailing corn meal

Sale of corn meal by weight.

48 lbs. to bushel.

by the bushel or bushels, at a weight less than forty-eight pounds for each and every bushel, if such quantity be not in the proportion of forty-eight pounds per bushel, each and every person so offending, upon conviction before the [Municipal Court] shall forfeit and pay a fine of five dollars.

Passed at City Hall, August 26, 1847.

AN ORDINANCE in relation to telegraph, telephone and electric light wires.

Height of wires.

SECTION 1. That from and after February 1st, 1886, it shall not be lawful to extend any telegraph, telephone or electric light wire over any public sidewalk or footway at a lesser height than nine feet from the surface thereof, nor over the bed of any street, lane or public alley at a lesser height than twenty feet from the surface thereof, and all telegraph, telephone or electric light wires now extended over any public sidewalk, footway, street, lane or public alley at a lesser distance than is provided by this ordinance, shall upon notification by the Street Commissioner, immediately cause such wires to conform to the provisions hereof. Any person refusing or neglecting to comply with any of the provisions of this ordinance, shall upon conviction thereof pay a fine of one hundred dollars ($100).

Penalty.

Passed at City Hall, December 31, 1885.

AN ORDINANCE to regulate auctions and auctioneers.

Clerk of Council to issue license.

SECTION 1. That any person or persons may apply to the Clerk of the Council for a license authorizing him to sell at public sale anywhere within the corporate limits of the city, every species of property, and upon the payment by him of the sum of one hundred dollars, ($100) (a) to the City Auditir for the use of the city, it shall be the duty of said Clerk and the President of the Council to issue to the person so applying a proper license therefor, under the hand of the said President and attested by the said Clerk, to continue in force for one year from the date thereof, which said license may be annually

Amount of.

Term of license.

renewed in like manner upon the payment of the sum aforesaid. Shall be renewed annually.

(*a*) *Nicholson, Ch.*: "—license taxes (not dependent upon the extent of the individual's business,) and generally, specific taxes on things or persons or occupations" can be imposed *without notice* to the individual.
English vs. Wilmington, 2 Marv. 63 at 90, 91 and 92. (yr. 1894)

The Council shall have power for cause deemed sufficient by eight members thereof, to revoke any license so granted, and the cause alleged shall be entered upon the minutes of the Council, and notice thereof, given to the auctioneer, if within the city. Every license so granted shall authorize the person therein named to sell property at public auction, and also one other person who the auctioneer may select as his assistant. Power of Council to revoke. Assistant.

SEC. 2. That a license so granted shall not authorize an auctioneer to have more than one auction house at the same time, and no auctioneer shall allow the use of his name by any other person than by his assistant in order that such person may conduct the business of an auctioneer, without obtaining a proper license as hereinbefore provided, in either case under a penalty of fifty dollars for each and every offence, to be recovered in the Municipal Court. To have but one auction house. Penalty.

SEC. 3. That any person who shall gather or collect goods, chattels, wares or merchandise in a store, wareroom, booth or bazaar, or other place of deposit whatsoever, either in his own right or on consignment from any other person, and shall sell the same from time to time at public auction, shall be considered as keeping an auction house, and be required to have an auctioneer's license; but any person regularly engaged in any business, upon quitting or retiring from said business, shall have the right to employ an auctioneer licensed as hereinbefore provided, to sell his stock of goods, wares and merchandise at public auction; *provided*, that no goods, wares or merchandise be added to said stock after the commencement of said sales. What constitutes an auction house keeper.

SEC. 4. That no auctioneer shall charge on sales outside of his auction room more than seven per cent. on household Charge for selling goods.

goods sold, or more than ten per cent. on notions, trimmings or other light goods sold in numerous small quantities; *provided,* that said commission amounts to the sum of five dollars for a sale, and if any sale the commissions as aforesaid shall not amount to the sum of five dollars, he shall be allowed to charge the sum of five dollars for such sale.

Proviso.

What constitutes a sale.

A sale during a morning, afternoon and evening shall each constitute a sale for which the auctioneer shall be entitled to charge as above stated.

Charges for sales of houses, lands, etc.

For houses, lands, tenements and vessels he shall be entitled to charge as follows: On sales amounting to $500 and under, the sum of five dollars; on an excess of $500 and under $1,000 one per cent. up to $1,000; on the second $1,000, one-half of one per cent.; on the third $1,000, one-fourth of one per cent.; and on every additional $1,000, one-tenth of one per cent. On property offered for sale and not sold, the auctioneer shall be entitled to charge one-half of the above commissions, but not to exceed the sum of ten dollars in such case.

Sales at auction room. Charges for.

On all sales at his auction room the auctioneer may charge ten per cent. commission.

The foregoing schedule will govern auctioneer's charges in all cases where there has been no special bargain between the auctioneer and the owner of the property to be sold prior to the sale, and the above commissions shall be clear of the usual expenses of such sales.

Penalty for selling without license. Proviso.

SEC. 5. That if any person not being a licensed auctioneer of this city shall sell or offer to sell by way of auction or vendue within this city, any goods, chattels, wares or merchandise, vessels, lands or tenements, every such person upon conviction thereof before the Municipal Court, shall forfeit and pay a fine of one hundred dollars ($100), and additionally at the rate of one per cent. of the amount of such sale; *provided,* that this ordinance shall not extend to executors or administrators selling property, real or personal, of their testators or intestates, nor to officers of this State, or county, or city, or of the United States, selling property, real or personal, by virtue of

legal process, or in execution of their officers, nor to any sale made for taxes, or for rent, or under any order of the Court, or by virtue of a power given by an Act of the General Assembly, or an ordinance of this city.

Penalty for overcharge for commission.

SEC. 6. If any auctioneer for any services or business by him as auctioneer shall receive or charge any commission or fee not allowed by this ordinance, he shall, upon conviction thereof, before the Municipal Court, forfeit and pay a fine equal in amount to four times the sum thus received or charged, and every auctioneer shall keep a copy of this ordinance posted in some conspicuous place in his auction room for the information of the public, and in default thereof, upon conviction thereof, before the Municipal Court, shall forfeit the sum of twenty dollars.

Fine.

To keep copy of ordinances in auction room.

Penalty.

Limit of time for payment by auctioneer, of proceeds of sale.

SEC. 7. If any auctioneer of this city shall refuse or neglect for the space of ten days after the sum shall have been due to the person justly entitled to receive the same, the proceeds of sale made by such auctioneer, upon conviction thereof before the Municipal Court, shall pay a fine of twenty dollars.

Penalty.

SEC. 8. All auctioneers' licenses (*a*) now in force shall continue in force until the expiration of the terms for which they shall have been issued.

(*a*) If a license be paid voluntarily, and the ordinance, afterwards, be declared to be unconstitutional, it cannot be recovered back.
Wilmington vs. Wicks, 2 Marv. 297. (yr. 1896)

Other ordinances repealed.

SEC. 9. That an ordinance entitled "An ordinance concerning auctioneers," passed November 13th, A. D. 1856, with the amendments thereto, and all ordinances, inconsistent with this ordinance, are hereby repealed.

Passed at the City Hall, June 24, 1897.

AN ORDINANCE to regulate the time and manner of payment of bills against the city.

Amendment, Ordinance of Dec. 11, 1890.

[SECTION 1. All bills against the city must be presented

Reading of bills.

to the City Council and then read on the first Thursday in each month, and shall then be referred to the committee contracting the same, or to some appropriate committee, who shall examine the same in conjunction with the City Auditor, and

Report to Council.

if found correct shall report the same to the City Council on the third Thursday, when, if Council so direct, orders shall be drawn in favor of the parties presenting the same, and said order shall be payable on the Tuesday next following. *Provided*, that the orders due for material or labor furnished to

Order for work and labor.

the City of Wilmington pursuant to contract made with The Mayor and Council of Wilmington, under the direction of City Council, may be granted on account of said contracts at any meeting of the City Council, if the claim therefor be marked correct by the City Auditor and be duly approved by a majority of the proper committee of the Council.]

Oct. 24, 1878.

When bills may be passed with unanimous consent.

[SEC. 2. The City Council may by unanimous consent direct that all bills so reported correct by the committee and City Auditor shall be read in their order, and the Council may, upon a single motion by a member, direct the drawing of orders in favor of the persons presenting said bills. All bills which shall be objected to during the reading shall be acted upon separately.]

SEC. 3. All ordinances or parts of ordinances inconsistent with this ordinance be and the same are hereby repealed.

Passed at City Hall, January 22, 1874.

AN ORDINANCE relating to the printing of ordinances of a private character.

SECTION 1. That every person, firm or corporation who

Payment for printing of private ordinances.

shall cause to be introduced into the Council any ordinance conferring upon such person, firm or corporation any benefits or privileges, shall, when the said ordinance has gone to a second reading, cause the same to be printed for the information of each member of the Council and shall further upon the passage of such ordinance, and its approval by the Mayor, pay the cost of the public advertisement of the same.

Passed at City Hall, March 17, 1887.

AN ORDINANCE to regulate shows, exhibitions and public representations.

Shows which require license.

SECTION 1. No person shall, within the limits of the city, for money or other reward, give or be concerned in giving any show, exhibition or public representation, except it be of a purely literary or scientific character, without a license therefor obtained as hereinafter provided.

License fees.

SEC. 2. The Mayor shall, on application, grant licenses, as follows: (*a*)

(*a*) If money be paid for a license, voluntarily, and the law afterwards be declared unconstitutional, the money cannot be recovered back. Wilmington vs. Wicks, 2 Marv. 297. (yr. 1896)

For a theatre, twenty-five dollars per year.

For a concert saloon or opera house, twenty-five dollars a year.

For a circus, a sum not exceeding fifty dollars for each exhibition.

For a menagerie or zoological exhibition, ten dollars.

For each exhibition of images, pageantry, necromancy, sleight-of-hand, and for each negro concert, two dollars and fifty cents.

For other representations not specified, a sum not exceeding five dollars for each performance.

No license shall confer the privilege of exhibiting in more than one place.

Changing place of exhibition.

A change of location may be made during a licensed term, and all the privileges of the license shall apply to the new place; *provided*, that such change be approved in writing by the Mayor.

Unlicensed shows.

SEC. 3. Every person who shall give, or be concerned in giving, any show, exhibition or public representation, without

a license obtained therefor, as required by this ordinance, shall forfeit and pay the sum of fifty dollars.

Owner of premises liable for fine.

SEC. 4. If any person shall wilfully suffer any show, exhibition or public representation to be made or had in any house, or upon the premises, in his possession, contrary to this ordinance, he shall forfeit and pay the sum of fifty dollars.

Term of license.

SEC. 6. A license shall not be valid for a longer period than one year from its date.

Fee for issuing license.

An addition fee of fifty cents shall be payable for every license to the officer issuing the same.

Passed at City Hall, April 4, 1861.

AN ORDINANCE providing for the issuing of licenses for places in which moving picture exhibitions are held; regulating the operation of moving picture machines, and providing a penalty for the violations of the provisions thereof.

BE IT ORDAINED, by The Council of Wilmington.

Moving picture exhibitions must be licensed.

SECTION 1. That it shall not be lawful to exhibit in any building, garden, grounds, concert-room, saloon, or other place or places or in any room or other enclosure within the City of Wilmington, any moving picture exhibition until a license for such building, garden, grounds, concert-room, saloon or other place or places, or room or enclosure, shall have first been granted by the Mayor of said city to the lessee or proprietor thereof, for which license the said lessee or proprietor shall pay a fee of one hundred dollars ($100), and which license shall be good and available thereafter for the whole or any portion of one calendar year, beginning on the first day of January of each year; *provided*, that this section shall not apply to any church or other place not devoted to the business of such exhibitions so as to require the payment of the said license fee for the giving of a single exhibition of moving pictures; *and provided, further*, that all licenses shall be paid for

License fee.

Exceptions.

pro rata from the time of issuance until its expiration the following December 31st. Pro rata license.

SEC. 2. It shall be unlawful to operate any moving picture machine unless the person so operating shall be over 18 years of age; *and further,* that it shall be unlawful for any operator or other person or persons at any time to smoke or carry matches into the operating booth hereinafter provided for, and no oil lamp shall be permitted there, nor shall illuminating gas be introduced into said booths. Operators must be over 18 years of age. No oil lamps.

SEC. 3. That a patent fire extinguisher shall be placed at or near each entrance, also that it be required that a patent fire extinguisher shall be placed in each operating booth. Fire extinguisher.

SEC. 4. All moving picture machines must be equipped with fireproof magazines for the top reel and tension take-up devices with fireproof magazines for the bottom reel. Said machines, together with the person operating the same, shall be enclosed in booths lined with asbestos, sheet iron or tin. All films shall be kept at all times, when not in use, in metal cases, and shall be removed at least two feet from the machines. Fireproof magazines.

SEC. 5. Before any license shall be granted as provided in Section 1 hereof, the Building Inspector shall certify to the Mayor that he has inspected such place, places, rooms and enclosures and the equipment and the exits thereof, and that he approves such application for license. The Building Committee of City Council, in connection with the said Building Inspector, are hereby authorized to make such rules (*a*) and regulations as they may deem necessary and proper and which are not inconsistent with the provisions herein in respect to all machines, appliances or the accessories thereof or thereto used in connection with or as part of the said moving picture exhibition. These rules and regulations shall, after having been ordered, apply to all moving picture exhibitions within the City of Wilmington. Certificate of Building Inspector before license.

(*a*) For the legal meaning of the word "rules" see the case of Morris et al vs. Pilot Coms., 7 Del. Ch. p. 136. (yr. 1894)

Power of Police Commissioners.

SEC. 6. The Police Commissioners shall have the power to prevent the operation of any moving picture machine by reason of the requirements of the foregoing sections not being fulfilled or by reason of any other cause that in their opinion endangers the public safety.

Penalty.

SEC. 7. Any person or corporation violating any of the provisions of this ordinance shall be subject to a penalty of one hundred dollars ($100), to be recovered as penalties of like amount are now by law recoverable.

Approved April 30, 1908.

AN ORDINANCE to prevent damage from gunpowder.

Stock of gunpowder limited to 50 lbs.

SECTION 1. If any person shall deposit, keep or have in any house, store or building, or in any place within this city, a greater quantity than fifty pounds of gunpowder every such person shall be guilty of a common nuisance, and upon conviction thereof shall forfeit and pay a fine of ten dollars, and an additional fine of five dollars for each quarter cask, or quantity of twenty-five pounds so deposited, kept or had above the said quantity of fifty pounds.

Penalty.

Judge shall issue process to Constable for removal.

The [Judge of the Municipal Court] upon credible information of a greater quantity of gunpowder than is allowed by this ordinance being in any place within this city, shall issue process to the High Constable or any City Constable, requiring him to direct the person depositing, keeping or having such gunpowder, to remove the excess thereof above fifty pounds beyond the limits of this city forthwith; the Constable in his return upon this process shall set down the day, hour and minute of service, and this return shall be competent evidence. If any person so served with process, shall not, within one hour after such service, remove the said excess of gunpowder by him, her or them so deposited, kept or had, beyond the limits of this city, he, she or they shall forfeit and pay a fine of fifty dollars; this fine shall not supersede the original fine incurred in the case, but shall be cumulative, and the said Judge shall have authority to make an order and to issue process to the

Return on process.

Disregarding process.

Penalty.

High Constable or to any City Constable, for removing the said excess beyond the limits of this city, or otherwise securing the same, as may be expedient. And the expenses hereby incurred shall be paid by the order of the Council, which said expenses shall be recovered by The Mayor and Council of Wilmington from the owner of the said gunpowder, or person who had the possession thereof, at their election, as like debts and demands are recoverable.

Issue of order for removal by Judge to Constable.

Expense of removal.

Not only the excess of gunpowder above the quantity allowed, for the depositing or keeping or having or not removing of which a fine shall be incurred under this ordinance, but the whole thereof shall be liable to be taken and sold to satisfy the judgment or sentence for such fine and costs, whether the defendant in such judgment or sentence be the person depositing or keeping, or having, or not removing the same.

Sale of the whole to pay expenses.

SEC. 2. For the purpose of supplying retailers of gunpowder within the City of Wilmington, it shall and may be lawful to introduce the same in kegs, containing not more than twenty-five pounds each, carefully enclosed in good bags, or by putting a sheet of canvas under and around the said kegs, sufficient to prevent the gunpowder from scattering from the said carriage, wagon or other vehicle in which it is conveyed and no one carriage or other vehicle shall contain, at any one time, more than ten of the above described kegs of gunpowder and if any gunpowder shall be brought into this city, except in the manner and in the quantity herein set forth, and contrary to the provisions of this ordinance, the person or persons owning the said gunpowder, and the person or persons so conveying the same shall, for each and every such offence, forfeit and pay the sum of five hundred dollars, one moiety to be paid into the city treasury and the other moiety to the person informing and prosecuting the offender to conviction; *provided*, that this section shall not extend to that part of the Christiana river included within the city limits, vessels loaded with powder being free to pass in said river along the city front.

Mode of bringing powder into city for sale.

Owner and driver equally responsible.

Penalty.

Half of fine for informer.

Vessels in Christiana exempt.

Constables and Street Commissioner to report to Mayor.

SEC. 3. It shall be the duty of the City Constables and Street Commissioner immediately to report any violation of this ordinance to the Mayor, who shall take the proper means to have it enforced without delay.

Passed at City Hall, October 13, 1856.

AN ORDINANCE declaring the making, storing, selling, disposing of, firing and exploding of certain fireworks to be a public nuisance and affixing penalties for its violation. BE IT ORDAINED, by the Council of Wilmington.

Public nuisance.

SECTION 1. It shall be a public nuisance for any person or persons, firm or corporation, after the passage of this ordinance, to discharge or explode, or cause to be discharged or exploded, or to manufacture, keep on hand or store, or to sell, dispose of, give away or furnish, directly or indirectly, within the limits of the City of Wilmington to any person or persons: (1) Any pistol, revolver or other weapon intended for the firing or exploding of blank cartridges, into which a bullet or loaded cartridge may be in any way inserted and exploded; (2) any bomb, torpedo, or device in the nature of a torpedo, to be exploded by percussion, friction, impact or contact, in or of which picric acid, fulminic acid, permanganic acid, cyanic or ferro-cyanic acid, hyponitric acid, or any of the salts thereof; nitro-glycerine, chlorate of potash, gun cotton, bisulphide of soda or of potash, bisulphide of carbon, or any form of antimony, mercury, gold, platinum or silver is a component part, and the use of the chemical equivalents of said ingredients or any of them, shall be deemed a violation of this ordinance; or any bomb, torpedo or other device in the nature thereof, of a larger size than three-quarters of an inch in diameter or inside measure in any direction; (3) any sort of fire cracker or detonating device in the nature of a fire cracker, loaded or charged with any substance, compound, combination of substances or explosive whatsoever other than ordinary black gunpowder; composed of sulphur, saltpetre and charcoal; (4) any detonating fireworks of any nature whatsoever, save in these ordinances otherwise provided, charged or loaded with any other explosive than such

Firearms or weapons.

Bombs or torpedoes.

Composition of.

Dimensions of.

Firecrackers.

Composition of.

Detonating fireworks.

ordinary black gunpowder; (5) any fire cracker or other detonating device whatsoever in the nature thereof of a size larger than five inches in length and one inch in diameter. Detonating firecracker.

SEC. 2. It is further declared to be a public nuisance for any person, firm or corporation to sell, give away or dispose of, or otherwise directly or indirectly furnish within the limits of said city, to any minor under the age of eighteen years, any gun, pistol, revolver or other firearm whatsoever. Declaration as to firm, corporation, etc. As to minor.

SEC. 3. It is further declared to be a public nuisance for any person or persons to explode or fire, or cause to be exploded or fired within said city limits any article or thing declared to be a nuisance in Section one of this ordinance. Declaration as to nuisance. Preceding section.

SEC. 4. If any person or persons, firm or corporation, or any employe of any person, firm or corporation do any of the things, the doing of which is hereinbefore declared to be a public nuisance, he, she, it or they shall, upon conviction thereof in the Municipal Court for said city, be punished by a fine of not less than twenty-five nor more than one hundred dollars. Penalty.

SEC. 5. If any person or persons within said city limits, shall throw or place any lighted firecracker or other fireworks, or any bomb, torpedo, or other device in the nature thereof, at, to, upon or toward any person, animal, window, house, car, car track, carriage or other property, or into or among any gathering of persons, he shall, upon conviction in said court, be punished by a fine of not less than one nor more than fifty dollars. Throwing, placing, etc. Penalty.

SEC. 6. In any prosecution under this ordinance, the charge may be laid against all or any of the several members of a firm or partnership, or against any employe of any person, firm or partnership; and in case of a corporation, the prosecution may be against either the president or other chief officer thereof, or against the person in charge of or managing the business, or any employe thereof. Charge may be laid. Firm or partnership, etc. President or chief officer.

SEC. 7. All ordinances or parts thereof inconsistent with this ordinance are hereby expressly repealed.

Passed at the City Hall, August 2, 1900.

AN ORDINANCE concerning the keeping and storing of petroleum and other oils.

Unlawful to to keep more than 5 barrels of oil.

SECTION 1. If any person shall deposit, keep, or have in any house, store, or building, or other place in this city, within the following boundaries, to wit: South of the Brandywine river, and east of Adams street, and north of Beech street and the Christiana river, as far down as the east line of Burk and McCaulley's shipyard, on a direct line to the Brandywine river, more than five barrels of kerosene, benzine, camphine, petroleum, or rock oil, no matter by what name it may be known, he shall be deemed guilty of a common nuisance, and upon conviction shall be fined ten dollars.

Fine.

Distance from dwelling required.

SEC. 2. In other portions of the city, not prescribed in Section 1, the article or articles within mentioned and prescribed shall not be kept or stored within a distance of one hundred feet of any dwelling house.

Inspection of premises by High Constable.

SEC. 3. It shall be the duty of the High Constable, upon the written requirements of the Mayor, or whenever he shall have reasonable grounds to believe that this ordinance is being violated, to go to and upon and inspect the premises or place where, or in which it is believed said nuisance exists, and forthwith to report the fact to the Mayor.

Passed at City Hall, February 7, 1867.

AN ORDINANCE to prevent the boiling or manufacturing, within certain limits, of any tar, pitch or like inflammable substance to be used in the manufacture of gravel or sand roofing.

Unlawful boiling of roofing materials.

SECTION 1. [If any person shall manufacture or boil, or cause to be manufactured or boiled, in any building or other place within the city limits, situate within one hundred yards

Jan. 9, 1862.

of any building within the limits aforesaid, any tar, pitch or like inflammable substance, to be used in the manufacture of gravel or sand roofing, except at the time of putting on a roof, when it may be lawful to heat the said material in the street, using no more time for such purpose than is absolutely necessary, every such person shall be guilty of a common nuisance, and upon conviction thereof shall forfeit and pay a fine of fifty dollars.]

Abatement of nuisance.

The [Judge of the Municipal Court,] on receiving credible information that the aforesaid business is carried on by any person within the limits aforesaid of this city, shall issue process to the High Constable, or any City Constable, requiring him to direct the person so engaged to abate the said nuisance forthwith; and the said Constable in his return upon this process shall note the time of service, and this return shall be competent evidence. If after the person so served with process shall not forthwith abate the aforesaid nuisance, he or they shall forfeit and pay a fine of fifty dollars, which fine shall not supersede the original fine incurred in the case, but shall be cumulative, and thereupon the [Judge of the Municipal Court] shall issue process directed to the High Constable, or any City Constable, directing him to abate the nuisance. All the expenses hereby incurred shall be paid by the order of the Council, which said expenses shall be recovered by The Mayor and Council of Wilmington from the person engaged in the aforesaid business, as like debts and demands are recoverable.

Payment and recovery of expenses.

Street Commissioner and Constables must report violations.

SEC. 2. It shall be the duty of the City Constables and the Street Commissioner immediately to report any violation of this ordinance to the Mayor, who shall take the proper means to have it enforced without delay.

Passed at City Hall, October 3, 1861.

AN ORDINANCE concerning public lamps and lamp-posts.

Lighting or extinguishing street lights and destroying lamps or lamp-posts.

SECTION 1. If any person or persons shall [light,] extinguish, break, destroy, injure, overthrow or carry away, with-

out legal authority, any public lamp, or lamp-post erected by authority of the Council, (a) by private subscription or otherwise in any of the streets, lanes or alleys of this city, every person so offending, and every person aiding or abetting the same, shall forfeit and pay for each and every public lamp or lamp-post so [lighted,] extinguished, broken, destroyed, injured, overthrown or carried away, a fine not exceeding ten dollars, nor less than one dollar, as well as a sum sufficient to replace every lamp-post or lamp so broken, destroyed, injured, overthrown or carried away.

April 16, 1866.

Penalty.

(a) Now, the Street and Sewer Department.

Passed at City Hall, February 20, 1862.

AN ORDINANCE for the protection of public lamps.

Obstruction of light.

SECTION 1. If any person, by means of any awning, sign, tree or other thing erected or being upon premises owned or occupied by him, or upon or over any footway or street in front of premises owned or occupied by him, shall obstruct or obscure or suffer or permit to be obstructed or obscured the light from any public lamp erected by authority of Council in any street, lane or alley of this city, he shall be guilty of a common nuisance, and forfeit and pay a fine not exceeding ten dollars.

Penalty.

Duty of Street Commissioner to abate such nuisance.

SEC. 2. If any person so offending shall be notified by the Street Commissioner to remove or abate such nuisance, and shall neglect or refuse so to do for twenty-four hours after such notice, the said Commissioner shall forthwith abate and remove the same at the expense of the person so offending, and such expense shall be recovered in an action in the name of the corporation before the [Municipal Court.]

Passed at City Hall, October 9, 1873.

AN ORDINANCE for the security and protection of shrubbery, fruit and ornamental trees within the city.

Injuring or carrying away trees or shrubbery.

SECTION 1. If any person or persons shall break, injure, destroy, overthrow or carry away any shrub, or fruit, or orna-

mental tree, planted by authority of this city or any citizen or resident thereof, in any of the streets, lanes, alleys or private gardens and enclosures within the city, every person so offending, and every person aiding or abetting the same, shall forfeit and pay for each and every shrub, fruit or ornamental tree so broken, injured, destroyed, overthrown or carried away, a sum not exceeding ten dollars, nor less than two dollars, with costs, and shall moreover be liable to an action to make good the damages. Penalty.

If the guilty party be a minor, his or her parent or guardian shall be liable for the fine and costs. Minors.

The High and Police Constables of the city are hereby strictly enjoined diligently to enquire after and prosecute all who shall offend therein. Duty of Constables.

Passed at City Hall, June 12, 1862.

AN ORDINANCE to protect ornamental and shade trees within the city.

SECTION 1. Whoever shall hitch or fasten a horse, or other animal of like kind to any ornamental or shade tree, or tree box protecting any ornamental or shade tree, within this city, without the consent of the owner of such tree or of the tenant of the premises on which it may be situated first had, shall be deemed guilty of a public nuisance, and upon conviction thereof fined in a sum not less than one dollar or more than five dollars, and upon sight thereof, any Constable or other officer of this city, may impound any such horse or other animal, and the vehicle to which it may be attached, until the fine and costs, and any reasonable expenses incurred in keeping and caring for them, shall have been paid. Hitching to trees forbidden. Fine. Impounding of animal hitched.

* * * * * * * * * *

Passed at City Hall, July 30, 1869.

AN ORDINANCE concerning lottery policies.

Lottery offices unlawful.

SECTION 1. All places or apartments where lottery policies, or paper with letters or figures that evidence the same, or where risks or devices in the nature of lottery policies are sold, are hereby declared to be nuisances within the city limits, and are to be regarded and treated as such.

Penalties.

SEC. 2. Any person who shall keep any such place or apartment, or maintain any such nuisance, shall forfeit and pay the sum of twenty dollars. A distinct offence against this ordinance shall be taken to be committed for every day that any such nuisance is maintained in any specific place or apartment.

Duties of policemen and Mayor respecting policy offices.

SEC. 3. It shall be the duty of the police officers to give information to the Mayor, of each house or place within the city wherein such sale may be kept up or maintained, and the said police officers shall take all lawful means to suppress and prevent the sale as aforesaid, and for this purpose, when and as often as any one of them shall have probable cause to believe that any house or place is used for the purposes of such sale as aforesaid, he shall make formal complaint to the [Judge of the Municipal Court,] whereupon the said [Judge] shall issue his warrant for the arrest of the person or persons so complained against.

Authorized lottery ticket.

SEC. 4. Nothing of this ordinance shall be regarded as prohibiting the sale of any authorized lottery ticket.

Passed at City Hall, May 3, 1860.

AN ORDINANCE for the protection of public drinking fountains.

Injuring fountains, washing hands or casting filth therein.

SECTION 1. If any person or persons shall break, injure or do any damage whatever to the public drinking fountains erected in this city, or shall wash their hands, persons or substances, or throw or put any stones, filth or matter whatsoever into the basins of the same, or shall injure in any manner fencing enclosing the same, every person so offending shall forfeit

and pay for every such offence a fine not exceeding fifty dollars, and not less than five dollars.

Arrests and prosecutions.

SEC. 2. It shall be the duty of all police officers and constables to make arrests and prosecute all violations of the provisions of this ordinance which shall come to their notice or knowledge; and all fines collected under this ordinance shall be paid one-half to the informer and prosecutor, and the other half to the City Treasurer for the benefit of the city.

Informer's share of fine.

Passed at City Hall, June 22, 1871.

AN ORDINANCE for the prevention of cruelty to animals.

Cruel treatment of animals.

SECTION 1. Whoever shall over-drive, over-load, overwork, torture, torment, deprive of necessary sustenance, cruelly beat, mutilate or kill, or cause or procure to be so overdriven, over-loaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated or cruelly killed, any horse, ox or other animal, and whoever having the charge or custody of any such animal, either as owner or otherwise, shall unnecessarily fail to provide such animal with proper food, drink or shelter, or protection from the weather, shall, for every such offence, be fined in a sum not exceeding one hundred dollars, and shall be imprisoned until such fine is paid.

Food and shelter.

Fine.

Unnecessary torture of animals.

SEC. 2. Every owner of, or person having the charge or custody of, any horse, ox, or any other animal, who shall knowingly and wilfully authorize or permit the same to be subjected to, or suffer unnecessary torture or cruelty shall be punished for every such offence in the manner provided in Section 1.

Old, maimed or disabled animals.

SEC. 3. Every owner, driver, possessor or person having the charge or custody of an old, maimed or disabled or diseased horse, mule or other animal, who shall cruelly work the same, when unfit for work, or cruelly abandon the same, shall be punished, for every such offence, in the manner provided in Section 1.

Transportation of animals.

SEC. 4. Any person, company or corporation, who shall carry, or cause to be carried, in or upon any vehicle, or otherwise, any animal in an unnecessarily cruel or inhuman manner, shall be punished in the same manner provided in Section 1.

Arrest and prosecution of offenders.

SEC. 5. It shall be the duty of all police officers and constables to make arrests, and prosecute all violations of the provisions of this ordinance which shall come to their notice or knowledge; and all fines collected under this ordinance shall

Informer's share of fine.

be paid, one-half to the informer and prosecutor, and the other one-half to the City Treasurer for the benefit of the city.

Acts subject to provisions of this ordinance.

SEC. 6. This ordinance shall apply to all such acts or violations within the limits of the City of Wilmington, and any violation of any provisions thereof shall be deemed and taken to be, and shall constitute, a public nuisance, offensive to the public sense and morals, and punishable as such.

Birds.

SEC. 7. The words dumb animals in this ordinance shall be construed to mean and include pigeons, swallows and all birds moving in or inhabiting the public thoroughfares of the city.

Passed at City Hall, November 3, 1870.

AN ORDINANCE to provide for the muzzling of dogs in the City of Wilmington.

Muzzling dogs.

SECTION 1. Any person or persons owning, harboring or possessing a dog, or dogs shall cause the said dog or dogs, whenever it or they shall be at large, and not held upon leash, between the first day of May and the first day of October in each and every year, to be effectually muzzled and secured, said muzzle to be attached to the head of the dog in such a manner as to prevent biting, said muzzle shall be a good, safe wire muzzle wide enough to permit the dog to drink and breathe freely.

Dogs at large without muzzle may be impounded.

SEC. 2. Every such dog found running at large within the limits of the City of Wilmington, during the period men-

tioned in Section 1 of this ordinance, without such muzzle, shall be seized and impounded, and after having been kept for forty-eight (48) hours without redemption, may be killed in a speedy and least painful manner; any person claiming a dog seized under the provisions of this ordinance, and proving ownership thereof, shall be entitled to resume possession of the same on the payment of the sum of one (1) dollar, for the use of the city; *provided, however,* that such claim shall be made before the expiration of the forty-eight (48) hours after the seizure and impounding of the same. Reclaiming dogs.

SEC. 3. Any person or persons owning, harboring or possessing a dog or dogs which shall be found running at large unmuzzled, and not held upon leash, at any time after the first day of May and before the first day of October of each and every year, shall upon conviction before the Municipal Court, forfeit and pay a fine of two (2) dollars for every offence, together with the costs of the prosecution. Penalty.

SEC. 4. The Mayor shall, if in his opinion the same shall be for the advantage and benefit of the citizens, as soon as may be after the passage of this ordinance, and in the month of April in each year thereafter, enter into a contract with the Delaware Society for the Prevention of Cruelty to Animals, or any other society or parties, for taking up, killing and removing to the crematory, of all unmuzzled dogs found running at large in the City of Wilmington between the first day of May and the first day of October in each and every year, in violation of this ordinance, provided that the contract so entered into shall not at any time exceed the sum of four hundred dollars ($400) in any one year. Mayor may contract for taking up dogs. Provisions.

SEC. 5. The Mayor shall at all times have the power to revoke the contract if the contractor or contractors do not carry out the contract to the Mayor's satisfaction. Powers of Mayor.

SEC. 6. The contractor authorized by the Mayor as aforesaid, or any agent of said contractor, shall have the right and power, and he is hereby authorized and directed to seize at any time and place, any dog or dogs which have been bitten by Authority of contractor as to bitten dogs.

another dog or dogs, and impound said bitten dog for a period of thirty days; and if at any time within said period of thirty days, said bitten dog shall exhibit symptoms of hydrophobia, it shall be killed, as provided in Section 2 of this ordinance.

If upon the expiration of said period of thirty days, the said bitten dog so impounded, shall have shown no symptoms of hydrophobia, it shall be restored to its owner, and all costs of the seizure, impounding and examination of every such bitten dog, shall be paid by the city.

The contractor aforesaid, shall cause an examination of every bitten dog so seized and impounded under this section of this ordinance, to be made by a competent veterinary surgeon, whose decision, as a result of said examination, shall be final and conclusive.

Penalty for unlawfully removing muzzle.

SEC. 7. If any person shall, without the consent of the owner or the person in possession of the dog, take from its head the muzzle placed thereon according to the first section of this ordinance, or shall obstruct any contractor authorized by the Mayor as aforesaid in the execution of this ordinance, every person so offending shall, upon conviction before the Municipal Court, forfeit and pay the sum of five dollars ($5) for every offence, together with the costs of the prosecution.

Municipal Court.

SEC. 8. All complaints of the violation of this ordinance shall be heard and determined by the Municipal Court.

Notice.

SEC. 9. This ordinance shall take effect and be operative within five (5) days from the date of its approval by the Mayor, and it shall be the duty of the Mayor to cause notice of the date at which this ordinance is to go into operation, to be published at least three (3) times in each of the three (3) daily newspapers of the City of Wilmington.

SEC. 10. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Approved June 26, 1902.

AN ORDINANCE to prevent annoyance from dogs.

Registration of dogs. Jan. 25. 1872.

SECTION 1. [The High Constable shall keep a register of dogs, stating therein the species, color and size of the dog, the name of the owner and any other description serving to identify the dog registered; (a) and for the registration there shall be paid to him for the use of the city, for every male dog one dollar, and for every female dog two dollars; and he shall deliver to the persons paying as aforesaid a metallic stamp with a hole in it and the letter R and the year for which it is issued [and a number to correspond with the receipt given by the High Constable] impressed thereon, to be attached to the neck of the dog registered.][1]

Ordinance of Dec. 17. 1885. Metallic medal.

(a) Registering a dog under this ordinance does not make it personal property, and therefore, not the subject of larceny. To make it personal property and the subject of larceny, it should be registered with the Clerk of the Peace of the county.

Lore, C. J.: "This dog was not registered with the Clerk of the Peace * * (Rev. Code, 399) which expressly made any dog so registered personal property and the subject of larceny, but was registered under the Charter of the town of Dover, which contains no such provision, and is merely a police regulation, leaving the dog as at common law, not the subject of larceny."

State vs. Butler, 2 Penn. 127 at 128. (yr. 1899)

See p. 548 of this volume.

Appointment of dog catchers. Aug. 11. 1870.

[SEC. 2.[2] The Mayor is hereby authorized to appoint (a) as many persons as he may consider necessary for the purpose of causing to be caught, impounded, killed and buried all dogs at large in this city not registered according to the provisions of this ordinance.]

(a) *Comegys, C. J.*: " * the Mayor had no authority under the Charter and ordinances of the city to appoint him" (dog-catcher) "a constable or policeman to perform the services for which the action had been brought."

Foster vs. Mayor and Council Wil., 8 Houst. 415 at 419. (yr. 1889)

The Mayor had appointed the dog-catcher, a police officer, it was claimed. The Mayor no longer appoints policemen.

See Sec. 6 "a," p. 210 of this volume.

Killing of impounded dogs.

At the expiration of twenty-four hours from the impounding of any dog it shall be killed and buried, *provided,*

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1. For ordinance providing for contract with societies or individuals see p. 977.

2. For an Act giving a property right in dogs, see 24 D. L. p. 113. (p. 548 this volume, under Miscellaneous Acts.)

Reclaiming. Fees. Offender liable for one fine only. Impounding of dog with no medal on neck. Fee.

the person entitled to such dog may, during that period, reclaim the same on the payment to the High Constable of five dollars for the use of the city, and one dollar to the person that caught and impounded the dog, and the offender shall not be liable for the violation of ordinance on account of which said dog was impounded; *and provided*, that if such dog was impounded for the cause only of not being registered, it may be reclaimed on satisfying the High Constable that the dog was registered at the time it was caught, and if the proper stamp was not attachel to its neck when caught, on paying to him fifty cents for the use of the person who caught and impounded it.

Fee for catching and destroying.

The compensation for catching, impounding, killing and burying each dog shall be one dollar.

Fine for registering. Ordinance of Dec. 17, 1885. Barking or howling. Informer. Non-residents.

SEC. 3. If the owner, possessor or harborer of any dog shall not, before the twentieth day of January in every year, cause the same to be registered, [or if any person coming into the possession of any dog after the twentieth day of January shall not immediately cause the same to be registered,] (*a*) or shall suffer such dog while on his premises to give reasonable cause of annoyance to any person by barking or howling, every person so offending shall be fined five dollars, one-half of the fine to be paid to the informer, *provided* that non-residents of the city not continuing therein at any one time longer than two days are not required to cause their dogs to be registered.

(*a*) One keeping a dog, and not having it registered, violates the ordinance, and, of course, can be *fined* under it, but the fact of not having had a dog registered is not admissible evidence, in a civil action for damages, by one who was bitten by an unregistered dog.

—"a witness called by the defence, was asked in cross-examination, "was the dog registered?" (352) Upon objection being made, it was contended that one "could show the defendant was keeping the dog in direct violation of an ordinance of the city." (352)

Lore, C. J.: "The negligence must go directly to the accident. Here it would not. The objection was" (is) "sustained."

Barclay vs. Hartman, 2 Marv. 351 at 352. (yr. 1896)

Removal of medals.

SEC. 4. If any person shall, without the consent of the owner or person in possession of any dog, take from its neck the stamp placed thereon according to the first section of this ordinance, or shall place on the neck of any dog any stamp not

issued by the High Constable, or not issued for the dog on which it is so placed, or shall obstruct any Constable or person appointed by the Mayor as aforesaid in the execution of this ordinance, every person so offending shall be fined five dollars, one-half the fine to be paid to the informer.

Counterfeit medals.
Interfering with officer.
Fine.

SEC. 5. If the owner, possessor or harborer of any female dog shall allow the same to be at large in this city while in heat, such person shall be fined ten dollars, one-half the fine to be paid to the informer.

Female at large in heat.
Informer.

SEC. 6. It shall be the duty of the Constables of the city to make complaint to the Mayor of all violations of this ordinance of which they have knowledge, and any Constable on failure to make complaint as aforesaid shall be fined five dollars, one-half the fine to be paid to the informer.

Constables must report violations under penalty.

SEC. 7. All complaints of violation of this ordinance shall be heard and determined by the [Municipal Court.]

Complaints, by whom heard.
Act of April 13, 1883.

Passed at City Hall, February 16, 1865.

AN ORDINANCE to empower the Mayor to enter into a contract with parties for the taking-up, killing and removing of unregistered dogs.

BE IT ORDAINED, by the Council of Wilmington.

SECTION 1. That the Mayor shall, if in his opinion the same shall be for the advantage and benefit of the citizens, as soon as may be after the passage of this ordinance, and in the month of July in each year thereafter, enter into a contract with the Delaware Society for the Prevention of Cruelty to Animals, or any other society or parties for taking-up, killing and removing to the City Crematory, of all unregistered dogs at large in the City of Wilmington, and for the taking-up and impounding of all animals at large in said city in violation of the ordinances thereof; *provided,* that the contract so entered into shall not at any time exceed the sum of $1,800 in any one year.

Shall enter into a contract with the Delaware Society for Prevention of Cruelty to Animals.
Shall not exceed the sum of $1800 in any one year.

The office of dog catcher shall be abolished.

SEC. 2. That so soon as the contract shall have been entered into as herein before provided, the office of Dog Catcher as heretofore provided by law shall cease and be abolished, and the agent or agents of the contracting party shall for all the purposes hereinbefore specified take the place of and be substituted for the Dog Catcher, and all the duties and rights imposed and conferred on the present Dog Catcher under any ordinance or resolution of the Council are hereby imposed and conferred on the agent or agents of the contracting party as fully as though herein specified; *provided,* that all fees and fines imposed by law and which have heretofore been paid to the Dog Catcher shall hereafter be paid to the City Treasurer for the use of the city.

Monthly orders shall be drawn by Council.

SEC. 3. Monthly orders shall be drawn by the Council payable to the order of the contracting party, which order shall be approved by the Mayor in writing.

Mayor shall have power to revoke the contract.

SEC. 4. The Mayor shall at all times have the power to revoke the contract, if the contractor or contractors do not comply with their part to the Mayor's satisfaction.

Passed at City Hall, June 27, 1895.

AN ORDINANCE providing that work for the city shall be done by contract.

Proposals for city work and materials by contract system.

SECTION 1. For all work and labor hereafter required to be done, and goods, chattels, wares, merchandise, materials, tools, implements and machinery to be furnished, or had and used by or for account of this city, where the cost in any particular case will probably exceed the sum of fifty dollars, the officer or committee having such business in charge, shall publicly invite sealed proposals for the doing of such work and the furnishing of such goods, chattels, wares, merchandise, materials, tools, implements and machinery, and give the contract to the lowest bidder or bidders; (a) *provided,* that they may require from all or any of the bidders security for the faithful performance of their contract; *and provided further,*

Lowest bid.

Security.

that nothing in this ordinance shall be construed to apply to the mere laying, setting or fixing of water pipes. Water pipes excepted.

(*a*) Under a street paving ordinance, which required the contract to be let to the "lowest bidder," the Court held, if the bid was not satisfactory to the city, the city could readvertise, alter plans, &c., and issue new specifications.

Keogh vs. Mayor and Council Wil., 4 Del. Ch. 491 at 497. (yr. 1872)

It also held it could (notwithstanding said ordinance) insert in the advertisement a clause reserving the right to "reject any or all bids," and under this clause could "even have preferred a higher bid." 498-9.

One who bids, under such conditions, practically, says as it is expressed by

The Chancellor: "I propose to do the work for so much, provided you "see fit to give me the job." id. 499.

Passed at City Hall, May 19, 1870.

AN ORDINANCE providing for the furnishing of security by contractors with the city.

SECTION 1. Whenever the city officers, or any of them, or any of the committees of Council, shall advertise for sealed proposals for any public work or contract of any kind whatsoever for or on account of this city, for the performance of which security shall be required, no bid or proposal from any person or persons therefor shall be received or considered unless the same be accompanied with a bond with sufficient freehold surety in the amount designated in such advertisements, with condition to be void if the obligor or obligors, being the successful bidder or bidders, and being awarded the contract, shall execute such contract and give bond for its faithful performance, as provided for in Section 2 of this ordinance. *Provided, however*, that no bid shall be received or considered from any person or persons who, after the passage of this ordinance, shall have failed in the performance or due execution of any contract he or they may have been engaged in with the corporation of the City of Wilmington, or who, in bidding for any such contract for the city, shall not have furnished with said bid the freehold security required in this section as a guarantee of the good faith of such bid. Bond. Condition. Proviso.

Contractors.

SEC. 2. Every contractor for any public work or contract of any kind whatsoever for or on account of this city, for the performance of which security shall be required before exe-

cuting said contract or entering upon its performance, shall give bond with sufficient freehold surety, to be approved by the Committee of Council having such business in charge, in the amount required and stated in the advertisement for the faithful performance of the work or contract.

Duty of City Solicitor.

SEC. 3. The bonds provided for in Sections 1 and 2 of this ordinance, shall be drawn and prepared by the City Solicitor, and shall have warrant of attorney for the confession of judgment thereon annexed. Printed blanks for proposals, with the bonds provided for in said Section 1 attached thereto, shall be prepared and kept in the office of the Clerk of the Council, to be supplied free by the said Clerk.

SEC. 4. No member of the Council nor any officer of this city shall be surety on any bond given under the provisions of this ordinance.

Passed at City Hall, February 1, 1877.

AN ORDINANCE to prevent the contamination and pollution of the Brandywine creek.

Contamination of Brandywine.

SECTION 1. No privy, urinal or other construction of easement shall be placed or allowed to remain over the waters of or directly upon the banks of the Brandywine or it tributaries above the first city dam.

Wells not nearer than 150 feet from banks.

SEC. 2. No privy, vault or reservoir into which a privy, water closet of cesspool is drained, shall be constructed, dug or permitted to remain within 150 feet of the banks of the Brandywine above the first city dam unless the same is thoroughly cemented so as to be watertight.

Nuisance.

SEC. 3. Any privy, vault or reservoir into which a privy, water closet or cesspool is drained, within 150 feet of the banks of the Brandywine above the first city dam, which is not made thoroughly watertight shall be considered a nuisance and

dealt with according to law regulating the pollution (*a*) of streams.

(*a*) See Act of February 4, 1864, 12 D. L. Ch. 405, Rev. Code of 1893, p. 926.
The city, aside from the above ordinance, and the statute mentioned, as a *riparian proprietor,* has a right to have the waters pure and uncontaminated by the riparian owners above. See the cases of
Jessup & Moore Paper Co. vs. Ford, 6 Del. Ch. 52 at 70. (yr. 1887)
Forman vs. Ford, 6 Del. Ch. 47. (yr. 1886)
See Sec. 2 "a," p. 184 of this volume.

Duty of Board of Health.

SEC. 4. It shall be the duty of the Board of Health of this city to enforce proper observance of this ordinance, and see that the same is strictly complied with.

SEC. 5. This ordinance shall be in effect immediately from and after its approval by the Mayor.

Approved March 2, 1907.

AN ORDINANCE authorizing the purchase of certain lots of land for the extension of the area of Brandywine Park.

Preamble.

WHEREAS, A majority of the Board of Park Commissioners have by a communication dated the twenty-sixth day of October, A. D. 1899, recommended to the City Council that the following described lots or parcels of land be purchased for the extension of the area of the Brandywine Park, to wit:

Description and location of land.

All that certain lot or parcel of land lying between Shallcross and Lovering avenues and extending easterly from Clayton street, two hundred and seventy-two feet and five inches (272 feet 5 inches).

Description and location of land.

All that certain lot or parcel of land bounded and described as follows, to wit: Beginning at the intersection of the northerly side of Shallcross avenue with the westerly side of Clayton street; thence northerly along said side of Clayton street, fifty feet to a corner; thence westerly and parallel with Shallcross avenue, two hundred feet to a corner; thence northerly and parallel with Clayton street, two hundred and fifty feet to the southerly side of Lovering avenue; thence thereby westerly seventy-two feet three inches to a corner; thence

southerly and parallel with Clayton street, three hundred feet to the northerly side of Shallcross avenue; and thence thereby easterly, two hundred and seventy-two feet three inches, to the said westerly side of Clayton street and place of beginning.

Description and location of land.

All that certain lot or parcel of land lying between Clayton and Rowan streets, and extending southerly from Shallcross avenue, seventy-five feet (75 feet).

Description and location of land.

All that certain lot or parcel of land lying between Gilpin and Shallcross avenues, and extending westerly from Clayton street, two hundred and thirty-three feet and nine inches (233 feet 9 inches).

THEREFORE, BE IT ORDAINED, by the Council of Wilmington.

Authority for purchase of land for park purposes.

Title to be vested in.

Amount to be paid not to exceed.

SECTION 1. That authority is hereby given for the purchase of the above described lots or parcels of land, the title to the same to be vested in "The Mayor and Council of Wilmington," by deeds from the respective owners of the same; the amount to be paid for said lots or parcels of land not to exceed the sum of seventeen thousand, five hundred and thirty-four dollars and fifty-cents in the aggregate.

Passed at the City Hall, November 16, 1899.

AN ORDINANCE authorizing the purchase of a certain tract of land for the extension of the area of Brandywine Park.

WHEREAS, A majority of the Board of Park Commissioners have by a communication dated the eleventh day of October, A. D. 1902, recommended to the Council that the following described lot or parcel of land be purchased for the extension of the area of the Brandywine Park, to wit:

Description.

All that certain lot or parcel of land beginning at the intersection of the southerly side of Eighteenth street, at fifty feet wide, and the easterly side of the right of way of the Baltimore and Ohio Railroad, thence eastwardly by said side of Eighteenth street, one thousand one hundred and thirty-six

feet, more or less to a corner of lands of the Mayor and Council of Wilmington, thence thereby southwardly nine hundred and twenty-three feet more or less to the northerly side of the right of way of the Brandywine branch of the Philadelphia, Baltimore and Washington Railroad, thence thereby westwardly six hundred and twenty-seven feet, more or less, to another corner of lands of the Mayor and Council of Wilmington, thence northwardly by said lands, five hundred and fifteen feet, more or less to a corner, thence westwardly, still by said lands, five hundred and five feet, more or less to the aforesaid easterly side of the right of way of the Baltimore and Ohio Railroad, and thence thereby northwardly eight hundred and sixty feet, more or less to the place of beginning, containing twenty-four acres.

Authority to purchase land for park.

SECTION 1. That authority is hereby given for the purchase of the above described lot or parcel of land, the title to the same to be vested in "The Mayor and Council of Wilmington," by deed or deeds from the respective owner or owners of the same; the amount to be paid for said lot or parcel of land not to exceed the sum of twenty-eight thousand eight hundred dollars ($28,800) in the aggregate.

Approved December 26, 1902.

AN ORDINANCE to provide for the purchase or acquisition of land for the extension of the area of Kirkwood Park, a public park of the City of Wilmington.

WHEREAS, A majority of the Board of Park Commissioners of The Mayor and Council of Wilmington, have by their written communication dated December 24, 1907, which is on file in the office of the Clerk of Council of said city, recommended to said City Council the purchase or acquisition of the lands hereinafter described for the purpose of extending the area of Kirkwood Park, a public park of said city, heretofore laid out and opened to public use;

And Whereas, Said The Council of the city aforesaid favor the acquisition of said lands for the purposes above set forth.

Authority to purchase land.

Section 1. The authority is hereby given for the purchase or acquisition of that lot of land in the City of Wilmington bounded by the northerly side of Twelfth street, the easterly side of Bennett street and low water mark in the Brandywine river, for the purpose of the extension of the area of Kirkwood Park, a public park of the City of Wilmington, heretofore laid out and opened to public use.

Condemnation.

Sec. 2. That if The Council shall be unable to amicably agree upon a purchase price for any or all of said land with the owner or owners thereof, then and in such case said lands may be taken for the purposes in this ordinance set forth in accordance with the provisions of Section 5 of an Act of the General Assembly of the State of Delaware entitled "An Act to provide for public parks for the use of the citizens of Wilmington and its vicinity," passed at Dover, March 13, 1883.

Approved April 6, 1908.

AN ORDINANCE requesting the Mayor to execute a contract with the "Wilmington Institute."

Whereas, The "The Mayor and Council of Wilmington" is authorized by Chapter 360, Volume 22, Laws of Delaware, to make a contract with the "Wilmington Institute" respecting payments of money to be made toward the support of free libraries and reading rooms in the City of Wilmington.

Now Be it ordained, by the Council.

Mayor requested to make contract with Wilmington Institute.

Section 1. That the Mayor be, and he hereby is, requested to enter into a contract with the "Wilmington Institute" to the following effect, to wit:

Terms of contract.

That it, the "The Mayor and Council of Wilmington" will pay to the said "Wilmington Institute" the sum of fifty ($50.00) dollars per year, for every one thousand ($1,000.00)

dollars hereafter bequeathed or donated to the said "Wilmington Institute," the said payments from the "The Mayor and Council of Wilmington" to be used by the said institute for the support of free libraries and reading rooms in the City of Wilmington; *and provided further,* that in no event, shall the sum to be paid by the "The Mayor and Council of Wilmington" under any contract made by virtue of this ordinance, exceed yearly, the sum of five thousand dollars. (*a*)

(*a*) See p. 524, note "a" of this volume.

Approved July, 1904.

AN ORDINANCE to provide for an additional annual appropriation for the Wilmington Institute Free Library.

BE IT ORDAINED, by the Council of Wilmington (two-thirds of the members thereof concurring):

SECTION 1. From and after the passage of this ordinance the Wilmington Institute Free Library shall receive an additional appropriation (*a*) of two hundred and fifty dollars per annum from City Council, to be used in the establishment and maintenance of a department for the blind in the Wilmington Institute Free Library. Additional appropriation.

(*a*) The new Constitution went into operation in June, 1907. The above ordinance was passed in August, 1907. Art. 8, Sec. 8 of the Constitution reads as follows:

"No * * city, town or other municipality shall * * *appropriate* money to, * * any private corporation, or any person or company whatever."

The Levy Court of New Castle county was mandamused by "The Ferris Industrial School" to make it appropriate money to it under a certain statute. It was claimed the school was a private corporation, and the constitutional clause above mentioned prohibited it. The Court said:

Lore, C. J.: "Would it not be * * unreasonable to hold, that an appropriation toward the maintenance of the inmates of the Ferris Industrial School, who have been committed to its custody by the State authorities, is within either the letter or spirit of Sec. 8, Art. 8 of the Constitution," &c. (604) "Such appropriation is so broadly public and impersonal in its scope and character as to rebut, if not rebuke, any suggestion of private emolument or private interest, within the intendment of the Constitution which clearly means that the county shall not be a party in or to private corporations. Upon the assumption, therefore, that this is a private corporation, for the above reasons we consider this appropriation not to be within the prohibition of

either Section 8, Article 8 * * of the Constitution, for the reason that the corporation being penal, reformatory and *educational* in its purposes,'' &c.

State vs. Levy Court, 1 Penn. 597 at 604-5. (yr. 1899)

Approved August 20, 1907.

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[1]*AN ORDINANCE relating to the right of way of ambulances.*

Right of way.

SECTION 1. That ambulances shall have the right of way, when responding to calls, or when conveying sick or injured persons along the streets of the City of Wilmington.

SEC. 2. That the motorman of any car, or the driver of any vehicle of any kind whatsoever, or any other person or persons in any way obstructing, delaying or in any manner interfering with ambulances, while responding to calls or when conveying sick or injured persons along the streets of the City of Wilmington, shall, upon conviction thereof before the Judge of the Municipal Court, be fined not less than five dollars, nor more than ten dollars, for each and every offence.

Penalty.

Approved May 24, 1904.

AN ORDINANCE concerning depositories of certain moneys belonging to the City of Wilmington.

BE IT ORDAINED, by the Council of Wilmington.

Collectors of taxes to deposit moneys.

SECTION 1. That from and after the passage of this ordinance, the Assessors and Collectors of the taxes, and all other officers of the City of Wilmington (except where otherwise provided by statute), shall deposit all moneys received by them during the current fiscal year for the use of the City of Wilmington, to the credit of The Mayor and Council of Wilmington in ''Union National Bank'' of Wilmington, Delaware.

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1. See Resolution of Street and Sewer Department, p. 1023 this volume.

Manner of withdrawals.

SEC. 2. All moneys so deposited shall be drawn out only as provided by Section 34 of the City Charter, *provided, however*, that moneys belonging to the Board of Water Commissioners shall be disbursed as provided in Section 13 of an Act entitled "An Act to establish a Board of Water Commissioners for the City of Wilmington, and for other purposes," passed at Dover, April 18th, 1883.

Deposits to be made daily.

SEC. 3. All moneys received by said Assessors and Collectors of Taxes and by other city officers, for the use of the city shall be deposited daily, and the officers making the same shall be required to take from the officers of the institution where such moneys are deposited, certificates of deposit in duplicate in form provided by Council, one of which shall be delivered immediately thereafter to the City Auditor. The City Auditor shall give to the officer so delivering to him said certificate of deposit, duplicate receipts therefor, one of which shall be filed in the office of the officer depositing such moneys and the other to the Chairman of the Finance Committee.

Duplicate certificates.

Approved August 24, 1907.

AN ORDINANCE requiring the publication of accurate detailed statements of the receipts and expenditures of the City of Wilmington.

WHEREAS, At the city election held on the first day of June, in the year 1907, the question: "Shall such ordinance be passed as will require the publication of minute and accurate detailed statements of the receipts and expenditures of the city?" received a majority of the votes cast thereon at the said election, and it is now the duty (*a*) of the Council to adopt such ordinance as may be necessary for putting into effect the popular will thus expressed; therefore,

(*a*) The above ordinance was passed pursuant to a vote taken at an election under what is generally known as the Initiative and Referendum Act. The "Whereas Clause" of the ordinance says, "and it is now the *duty*," &c., of The Council to pass the ordinance, and a failure of a Councilman to vote for the ordinance makes it a *misdemeanor*, &c. This shows that a *puppet* is made of "The Council." The above Initiative and Referendum Act is clearly a case of a delegation, by the Legislature, of delegated legislative power, involving discretion and judgment, to the

people. The maxim is, "delegatus non potest delegari." This cannot be done without an amendment to the Constitution. See Sec. 8 "a," p. 417 of this volume, where a full account of the law is given, and the case of State Del. ex rel. The Mayor and Council Wil. vs. Sayers. (yr. 1907) App. Dock. p. 425.

City Treasurer to prepare statement of receipts.

SECTION 1. That it shall be the duty of the City Treasurer to prepare and deliver to the Clerk of Council, before the first day of July in each year, beginning with the year 1908, an accurate detailed statement of all receipts of the City of Wilmington from every source whatsoever during the preceding year.

City Auditor to prepare statement of expenditures.

SEC. 2. That it shall be the duty of the City Auditor to prepare and deliver to the Clerk of Council on or before the thirty-first day of July in each year, beginning with the year 1908, an accurate detailed statement of all expenditures of the said city for every purpose whatsoever during the preceding fiscal year, arranged under the headings of the several appropriations for said fiscal year.

Clerk of Council shall publish statements.

SEC. 3. That it shall be the duty of the Clerk of Council within thirty days after the receipt of the statements required by Sections 1 and 2 of this ordinance, to cause the same to be published in pamphlet form and in such numbers as will best inform the public of the facts contained in such statements, and it shall be the further duty of said Clerk of Council to cause said statements to be distributed among the taxpayers of the city.

Failure to perform duties a misdemeanor.

SEC. 4. That the failure or refusal of the City Treasurer, City Auditor or Clerk of Council to perform the duties hereby imposed shall be deemed a misdemeanor, and be punished by a fine at the discretion of the trial court. Conviction of such an offence shall operate to remove the offender from office and render him ineligible to hold any position as an official or employe of the City of Wilmington for a period of five years from the date of such conviction.

SEC. 5. That all ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Approved September 14, 1907.

AN ORDINANCE making appropriations for the expenses of the City of Wilmington for the fiscal year beginning on the first day of July A. D. 1909, and ending on the thirtieth day of June, A. D. 1910.

BE IT ORDAINED, by the Council of Wilmington.

SECTION 1. That the sum of one million fifty-five thousand one hundred and thirty-one dollars $1,055,131.00) be and the same is hereby appropriated for the expenses of the city government for the fiscal year beginning on the first day of July, A. D. 1909, and ending on the thirtieth day of June, A. D. 1910, specified and arranged under the following heads and items, to wit:

EXPENDITURES.

Interest	$ 133,574.50
Sinking Fund	50,900.00
Redemption of Loans	3,500.00
Board of Education	221,609.96
Board of Education—New Schools	20,000.00
Street and Sewer Department	195,000.00
Salaries	35,000.00
Fire Department	65,000.00
Inc. and Misc.	8,000.00
Police Department	103,500.00
Public Building	5,000.00
Printing and Stationery	2,500.00
Board of Health	7,500.00
Board of Health—Special	1,000.00
Park Commissioners	18,000.00
Public Square	1,000.00
Garbage	16,264.65
Crematory	3,800.00
Wilmington Institute Free Library	12,414.48
Police Committee	2,500.00
Police Pension Fund	2,000.00
Board of Water Commissioners	120,000.00
Harbor Improvements	6,567.41
Tax Office	15,000.00

Fuel for Poor	3,500.00
City Election	2,000.00
	$1,055,131.00

Approved June 10, 1909.

PART V

Resolutions

OF THE

Board of Directors

OF THE

Street and Sewer Department

RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE STREET AND SEWER DEPARTMENT,

As Amended and in Force December 31st, A. D. 1909.

		Page
1.	Placing Signs on Poles or Trees	994
2.	Regulating the Planting of Trees	995
3.	To Protect Grass Plots Between Curb and Property Lines	995
4.	Transferring Gilpin Avenue Tree Fund	996
5.	Provisions Relating to Gilpin Avenue	996
6.	Waste Paper and Rubbish Vessels	997
7.	Providing for the Removal of Rubbish and Ashes	998
8.	Concerning Hand-bills, Circulars, Dirt or Ashes	999
9.	Spitting in Certain Places	1000
10.	Deposits of Building Material	1001
11.	Opening Beds of Streets	1004
12.	Rates for Permits to Open Streets	1005
13.	Declaring Defective Sidewalks a Nuisance	1006
14.	Unpaved Spaces of Sidewalks	1007
15.	Regulating the Construction of Cement Sidewalks and Curbs	1008
16.	Fixing the Price of Curbstones	1010
17.	Curb Corners	1010
18.	Setting Curbstones	1011
19.	Regulating Street Markets	1012
20.	Permission to Use Street Markets	1012
21.	Market for Christmas Trees	1013
22.	Regulating the Erection of Bay Windows, &c.	1013
23.	Prohibiting the Construction of Cellar Ways, &c.	1016
24.	Regulating the Extension of Steps, &c., on Certain Part of Pennsylvania Avenue	1017
25.	When Deeds for Street Beds to be Accepted	1018
26.	Relating to Snow and Ice on Sidewalks	1018
27.	Coasting on Sidewalks	1020
28.	Coasting on Streets	1020
29.	Prohibting Roller Skating on Sidewalks	1021
30.	Concerning Bicycles, &c.	1022
31.	Additional Provisions Concerning Bicycles	1023
32.	Right of Way of Ambulances	1023
33.	Requiring Fenders and Wheel Guards on Railway Cars	1024
34.	Requiring Street Car Companies to Sprinkle Streets	1026
35.	Preventing the Blocking of Street Cars	1027
36.	Preventing Unnecessary Noise by Street Cars, &c.	1029
37.	Unused Railway Grants Revoked	1031
38.	Annulling Unlimited Consent to Railways	1031
39.	Requiring Railway Companies to Use Franchises	1032
40.	Leasing Front and Church Street Wharf	1033
41.	Dividing the City Into Districts	1033

		Page
42.	Assistant Clerk	1034
43.	Bookkeeper to be Assistant Secretary	1034
44.	Engineer of Sewers	1035
45.	Creating a Plumbing Inspector, and Providing Rules Relative to Plumbing, &c.	1036
46.	Corner of Sidewalk at Maryland Avenue and Reed Street	1055
47.	Sidewalk at Seventh and Church Streets	1056
48.	Changing the Name of Front Street	1057
49.	Changing the Name of Part of Hazlet Street	1057
50.	Changing the Name of "Forty-foot" Street	1057
51.	Changing the Name of Concord Pike and Morrow Street	1058
52.	Changing the Name of a Portion of Thirty-sixth Street	1058
53.	Changing the Names of Certain Streets	1059
54.	Vacating Parts of Third, Fourth, Spruce, Church, and Robinson Streets	1060
55.	Vacating Parts of Lobdell and Other Streets	1061
56.	Vacating Part of Woodlawn Avenue and Other Streets	1061
57.	Vacating Portions of B and Other Streets	1062
58.	Vacating a Portion of West Fourteenth Street	1063
59.	Vacating a Part of Sixteenth Street	1064
60.	Vacating a Part of Thirty-third Street and Other Streets	1064
61.	Vacating a Part of Water Street	1065
62.	Vacating a Part of Bowers Street	1066
63.	Vacating a Part of Canal Street	1067
64.	Vacating a Part of Warner Street	1068
65.	Vacating a Part of Thirty-fourth Street	1069
66.	Vacating a Part of West Liberty Street	1069
67.	Vacating a Part of Linwood Avenue	1070
68.	Fixing the Fiscal Year	1071

A RESOLUTION in relation to placing of signs on poles and on trees in the City of Wilmington, Delaware.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, Delaware:

Signs or advertising on trees and poles prohibited.

SECTION 1. That any person or persons, company, firm or corporation placing or causing to be placed any sign, advertisement or show bill on any pole used for telephone, telegraph, light or power purposes, or for any other purposes, or on trees, located on the public streets or highways of the City of Wilmington, Delaware, shall be guilty of a common nuisance and upon conviction thereof in the Municipal Court shall forfeit and pay a fine of five dollars and an additional fine of five dollars for every twenty-four hours that such nuisance is continued.

Penalty.

SEC. 2. That all ordinances or resolutions or parts of same inconsistent herewith are hereby superseded.

Adopted August 27, 1907.

A RESOLUTION regulating the planting of trees in the sidewalks of streets within the limits of the City of Wilmington.

Be it resolved, by the Board of Directors of the Street and Sewer Department of Wilmington, Delaware:

SECTION 1. Every person shall be at liberty to plant shade trees, except such as are known as "Carolina or Cottonwood" poplars, "Lombardy" or other trees of the same family of poplar trees above mentioned, in the outer edge of any paved or other footway or sidewalk, within the curb line or stones and not more than twelve inches in the nearest part from said curb line or stone, *provided, however,* that any person or persons owning property in front of any tree or trees, planted as hereinbefore provided, shall keep such tree or trees properly trimmed, and remove such tree or trees at any time when deemed necessary, upon notice so to do, by the Street Commissioner or such other person or persons having jurisdiction in such matters.

Planting of poplar trees prohibited.

Trees to be trimmed upon notice from Street Commissioner.

Adopted August 3, 1897.

A RESOLUTION to protect and preserve the grass plots between the curb and property lines of the streets of the City of Wilmington.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, Delaware:

SECTION 1. If any person shall wilfully or negligently ride, drive or lead a horse, cow, beast of burden or any cattle, or a wagon, cart, gig, bicycle, sled, or other carriage or vehicle on any of the grass plots between the property and curb lines of any of the streets or avenues within the limits of the City of Wilmington, or if any person shall permit or suffer the

Driving animals or vehicles on grass plots prohibited.

same to be so ridden, driven or led on the grass plots of any of the streets or avenues, or if any person shall wilfully or negligently trample on any of the grass plots aforesaid, every such person so offending and the owner of such animal or vehicle, shall each upon conviction thereof in the Municipal Court for said city, be punished by a fine of not less than one dollar ($1) nor more than ten dollars ($10).

Penalty.

Grazing of animals on grass plots between curb and property line prohibited.

SEC. 2. If any person shall permit or suffer any horse, cow or other cattle to graze or pasture upon any of the grass or foliage upon any of the grass plots between the curb and property lines of the streets and avenues of the City of Wilmington, such person so offending shall, upon conviction thereof in the Municipal Court of said city, be punished by a fine of not less than one dollar ($1) nor more than twenty dollars ($20).

Adopted May 12, 1903.

Re-adopted May 7, 1907.

A RESOLUTION to transfer the Gilpin Avenue Tree Fund to the Board of Park Commissioners.

Be it resolved, by the Board of Directors of the Street and Sewer Department:

Tree fund to Park Commissioners.

SECTION 1. That the fund known as the "Gilpin Avenue Tree Fund," be transferred to the Board of Park Commissioners, said fund to be used for the sole purpose of which it was expressly donated.

SEC. 2. * * * * * * * * * *

Adopted July 14, 1896.

A RESOLUTION in relation to Gilpin avenue.

Preamble.

WHEREAS, By an Act passed May 5th, 1891, this board is authorized and empowered to change and determine the curb lines on Gilpin avenue; and also to define and determine what parts of said avenue, between the curb and property lines,

shall be paved, and the width and character of such pavements; therefore

Be it resolved, by the Board of Directors of the Street and Sewer Department:

SECTION 1. That the curb lines on Gilpin avenue shall be twenty feet from the property lines, leaving the roadway thirty feet wide. Curb lines.

SEC. 2. That eight feet in width of the spaces between the curb and property lines and adjoining the property lines shall be paved with brick or other approved material as sidewalks, leaving for trees and grass the spaces that will remain between such sidewalks and the curbs, excepting such transverse walks between sidewalks and curbs as may be desirable. Paving of sidewalks, width of.

Adopted June 1, 1892.

A RESOLUTION relating to nuisances and regulating use of waste paper and rubbish vessels.

Be it resolved, by the Board of Directors of the Street and Sewer Department of Wilmington, Delaware:

SECTION 1.[1] * * * * * * * * Repealed and supplied by Resolution May 14, 1907.

SEC. 2. Vessels belonging to the city located in various public places throughout the city may be used as receptacles for all paper and waste hereinabove mentioned, and any person or persons displacing or defacing, or in any manner abusing such vessels, shall forfeit and pay the same fines as provided for offences in the first section of this resolution. City receptacles for paper, &c. Penalty for defacing.

SEC. 3. This resolution shall not be construed to interfere in any manner with the regulations concerning waste paper and rubbish placed for collection by the ashes and rubbish contractor. Not apply to ash contractors.

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1. See Resolution May 14, 1907, (Sec. 1) p. 999 of this volume.

Notice of resolution to be published.

SEC. 4. This resolution shall become and be of full force and virtue on and after ten days from the date of its passage; and a publication in at least two daily papers of the City of Wilmington for a period of at least three days, within a reasonable time after its adoption shall be construed to be of sufficient notice and warning.

Adopted May 22, 1900.

A RESOLUTION providing for the removal of rubbish and ashes.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington:

Removing ashes supervised by Street Commissioner.

Contractors to remove housekeeping rubbish each week.

SECTION 1. That the work of removing ashes, dirt and other rubbish, incidental to housekeeping, shall be under the supervision of the Street Commissioner. It shall be the duty of the person or persons contracting for the removal of same to cause to be removed, all cut grass from yards and lawns, ashes, dirt and other rubbish incidental to housekeeping from all offices, stores, hotels, public schools, city buildings and from all other buildings whatsoever within the limits of the City of Wilmington (except ashes and rubbish produced from manufacturing or commercial pursuits), each and every week, by districts, on such day or days as the Street Commissioner may select, and deposit the same in such place or places as said Street Commissioner may direct.

Ashes and rubbish to be deposited in vessels.

SEC. 2. Any person or persons, firm or corporation, desiring ashes or rubbish to be removed, shall deposit the same in a vessel or vessels, which shall not contain more than the quantity that could be placed in an ordinary flour barrel and place such vessel or vessels at the curb on the street before the premises respectively from which the same are brought, which shall be set at the curb before seven o'clock in the morning.

On curb before 7 a. m.

Ashes and rubbish to be separated.

Provided, however, that ashes must be placed in a vessel separate from rubbish. Ashes and rubbish, if placed in the same vessel, will not be removed.

SEC. 3. All ordinances or resolutions inconsistent herewith are hereby repealed.

Adopted July 28, 1896.

A RESOLUTION concerning offences against the public economy and certain nuisances.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, Delaware:

SECTION 1. If any person shall cast or place or cause to be cast or placed in any street, highway, lane or alley of the City of Wilmington, or on the sidewalks or footways thereof, or upon the porches or steps of any dwelling or other building within the limits of the said city any paper, advertisement, handbill, circular or waste paper, such person or persons shall be deemed guilty of a common nuisance and shall forfeit and pay a fine not exceeding ten (10) dollars nor less than two (2) dollars for each and every offence.

Distribution of circulars, hand bills, &c., in city limits a nuisance.

Penalty.

Provided, that nothing herein contained shall be held to apply to the distribution of the latest issue of newspapers, addressed envelopes, or regularly published magazines or periodicals.

Exception as to newspapers, &c.

SEC. 2. If any person shall place or cause to be placed on any public street in this city any ashes, dirt, rubbish, offal or other thing, except as prescribed and allowed by the ordinances of the city, such person or persons shall be deemed guilty of a common nuisance and shall forfeit and pay a fine not exceeding five dollars and an additional fine not exceeding five dollars for every twenty-four hours that such nuisance is continued, *provided*, that persons in removing any article or substance from their premises may place the same on the street, between the curb lines, temporarily if such article or substance be not offensive, and shall remove it therefrom before night of the same day on which it was placed on the street; *provided, further*, that this resolution does not alter or

Placing ashes, dirt, &c., on a public street a nuisance.

Penalty.

Exception.

affect the ordinances concerning nuisances injurious to the health of the city.

Further exception.

SEC. 3. This resolution shall not be construed to interfere in any manner with the regulations concerning ashes and rubbish placed on the sidewalks for collection by the city.

SEC. 4. All ordinances or resolutions or parts of the same inconsistent herewith are hereby repealed.

Adopted May 14, 1907.

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[1]*A RESOLUTION to prevent spitting in certain public places in the City of Wilmington.*

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, Delaware:

Spitting on sidewalk prohibited.

SECTION 1. It shall be unlawful on and after the passage of this resolution for any person to spit on the sidewalk, crosswalk or footway of any public street in the City of Wilmington, Delaware.

Definition.

SEC. 2. The term spitting as referred to in this resolution shall be defined as follows:

The act of expelling anything from the chest, throat, mouth or nose.

Penalty.

SEC. 3. Any violation of this resolution shall be punishable by a fine of not less than one dollar nor more than five dollars for the first offence and not less than two dollars nor more than five dollars for each succeeding offence.

Adopted November 12, 1907.

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1. See ordinance passed Oct. 26, 1907, p. 764 of this volume.

RULES AND REGULATIONS concerning deposits of building material in the streets.

Be it resolved, by the Board of Directors of the Street and Sewer Department, as follows:

Deposit of building material in street prohibited.

Permit from Board.

SECTION 1. No person or persons shall deposit or place in any street, lane or alley or other public place of this city, any materials to be used in the erection, alteration or repair of any house, building or structure or for any other purpose, without a permit having been obtained therefor from the Board of Directors of the Street and Sewer Department, as hereinafter provided.

Persons having permit from Building Inspector must apply to Board.

Permit for six months.

Renewal.

SEC. 2. Any person who has obtained from the Building Inspector of this city a license for the erection, alteration or repair of any house, building or structure in this city, or any other person who shall have occasion to deposit material for building or other proper purposes in any street, lane or alley of this city, shall apply to the Board of Directors of the Street and Sewer Department for a written permit, and thereupon the Secretary of said Directors may issue a written permit to use a part, therein stated, of said street, lane or alley, for a period not exceeding six months which said permit may be renewed on like application until such house, building or structure, or other work shall have been completed. But it shall not be lawful for any person to whom such permit shall be granted to use or occupy any portion of said street except immediately in front of the lot on which said house, building or structure is to be erected, without the consent of the owners of the adjacent property, or to use or occupy more than one-third of the width of the said street between the curb lines. All material not required in the rebuilding operations must be immediately removed. The permanent storage of building or other materials on the streets will not be permitted.

Consent of property owners before using adjoining property.

Permanent storage prohibited.

Sidewalks must be clear.

SEC. 3. The sidewalk in front of said premises shall be kept at all times free and clear for pedestrians, and suitable

provisions maintained when the same is removed for alterations or other purposes.

Space occupied must be uniform.

SEC. 4. The material shall occupy a space of uniform width; and brick and stone piled solid shall not exceed eight (8) feet in height, nor shall the same be placed within three (3) feet of any railroad track, nor within four (4) feet of any city lamp post or ten (10) feet of any fire hydrant, nor so placed as to obstruct the free flowage of water along the gutter in front of any property or inlets to sewers.

Materials must not be an obstruction.

Light must be placed at night.

SEC. 5. In all cases, suitable and sufficient lights[1] are to be placed upon such building materials at twilight in the evening, and the same are to be kept burning all night and every night until such building or other materials are removed from such street.

Fences around excavations.

SEC. 6. Fences must be erected to guard excavations and to prevent pedestrians from falling into the excavations.

Adjacent streets must be cleaned daily.

SEC. 7. The streets adjacent to the operations shall be cleaned each day by the party or parties in charge of such operations, of all waste, dirt, droppings from carts and building debris.

Permit is conditional.

SEC. 8. The permit is issued conditional that all material and obstructions shall be removed from the street within six hours after notice is served. In case of any street opening, or repairing or laying of water pipes, gas pipes, sewers, subways or other improvements or alterations, the permit is hereby revoked, and all material must be immediately removed without further notice. The party to whom the permit is issued, takes and accepts such permit subject to these conditions, and the condition that the said party shall and will save "The Mayor and Council of Wilmington," Delaware, its successor or assigns, harmless, of and from all actions, suits, controversies,

The Mayor and Council to be indemnified.

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1. See ordinance passed March 24, 1882, p. 949 of this volume.
See p. 1002 this volume.
See Sec. 34 of Resolution passed March 26, 1901, p. 1052 of this volume.

claims and demands whatsoever which may be brought or made against the said corporation by any person or persons for or on account of any damage or injury they may have received or sustained through or by reason of any carelessness, neglect, want of skill, or of any act or omission on the part of the party accepting such permit.

Violation of conditions to cause revocation.

SEC. 9. Any violation of the ordinances relating to barriers, erection of fences, placing sufficient lights to prevent accidents, or failure to comply with the above conditions, or either of them, will be sufficient cause for revocation of the permit, and the commencement of proceedings to recover penalties for the violation of the same.

Penalty.

SEC. 10. If any person shall deposit any materials for building or other purposes in any street, lane or alley of this city without a permit having been granted therefor as herein provided, upon conviction thereof before the Municipal Court of this city shall forfeit and pay a fine of twenty-five dollars, besides the costs of suit.

Additional penalties.

Penalty.

SEC. 11. If any person shall suffer any building or other materials to be and remain in any street, lane or alley of this city after the permit therefor shall have expired; or shall neglect or refuse to place and maintain red lights on deposits of such building or other material as herein provided; or shall neglect to surround and inclose such deposits with proper and sufficient safeguards or barriers against accidents; or shall violate any of the provisions of these rules and regulations, upon conviction thereof before the Municipal Court, every one so offending shall forfeit and pay a fine of ten dollars besides costs of suit.

SEC. 12. All ordinances or resolutions or parts of ordinances or resolutions (including all ordinances and parts of ordinances heretofore passed by the City Council and now in force) inconsistent herewith are hereby repealed.

Adopted February 1, 1898.

[1]*A RESOLUTION relative to the opening of beds of streets.*

Preamble.

WHEREAS, The digging up of the streets for the purpose of laying private water pipes from mains in streets and for making connections with sewers, and for repairing said pipes by plumbers or other persons is the cause of a number of holes and depressions in our streets for which there seems to be no one responsible; (*a*) therefore *be it resolved*:

(*a*) The city is "responsible," if one be injured from defective *streets*,—and also as to sidewalks if the defective condition thereof was "caused by the city or any of its authorized agents."
See Secs. 120 and 121 of the Charter and notes thereto.

Permit.

SECTION 1. That hereafter any person or persons wishing to open the bed of a street or streets for either or all of the above named purposes, or for any purpose whatever, shall first obtain a permit from this department by making application in writing on blanks to be furnished by this department, in which the applicant shall make himself responsible for any and all accidents (*b*) which may be caused by the opening of said street or streets, and shall furthermore agree to fill in and thoroughly ram (*c*) the excavations of said opening and relay pavement of said street or streets, and immediately put said street or streets in as good condition as they were before being opened.

Responsibility for accidents.

(*b*) The city should take bonds of indemnity from plumbers and others, tearing up the streets, for, whatever remedy it may have over against such plumbers and others, for negligence, &c., *it* (the city) is liable to persons injured by such negligence. See the case of
Anderson & Son vs. Wil., 8 Houst. 516 at 526-7. (yr. 1889)
See Sec. 1 "b," p. 950 of this volume.

(c) See the cases of
Kent vs. Wil., 7 Houst. 397. (yr. 1886), and
Schelich vs. Wil., 1 Boyce 57. (yr. 1909)
(Damage suit cases arising out of an improper ramming of street beds.)

Deposit.

Amount.

SEC. 2. And furthermore the applicant shall make a deposit with this department of fifty cents for each and every square yard of street or streets which he is permitted to open, to the extent of ten square yards, and for all openings in ex-

1. See provision of a resolution adopted March 26, 1901, as to restoring street to former condition, p. 1052 of this volume.

cess of ten square yards, he shall make an extra deposit the amount of which will be fixed at the discretion of the Street Commissioner.

SEC. 3. The above named deposit shall be held by this department until said street or streets are reported by the Street Commissioner to be in good condition.

SEC. 4. If the above named conditions are not complied with the repairs are to be immediately made by the Street Commissioner and the expense of said work deducted from the amount of said deposit and the balance if any, refunded.

SEC. 5. All ordinances and resolutions or parts of the same inconsistent herewith are hereby superseded.

Adopted July 9, 1889.

A RESOLUTION fixing rates to be charged for permits for opening streets.

SECTION 1. That the following rates are hereby fixed by this department for the government of charges for permits for opening streets:

Terra cotta pipe.

For each lineal foot of six inch terra cotta pipe laid from sewer to curb line, the sum of sixty (60) cents including the excavation and filling of trench, furnishing of materials and laying of pipe.

Brick.

For each square yard of vitrified brick pavement the sum of one (1) dollar.

Bitulithic pavement.

For each square yard of bitulithic pavement, the sum of three (3) dollars.

Asphalt.

For each square yard of sheet asphalt pavement, the sum of three (3) dollars.

Macadam.

For each square yard of street with macadam or telford pavement, the sum of one (1) dollar.

Granite. For each square yard of street with granite block pavement, the sum of one (1) dollar.

Rubble. For each square yard of street with rubble stone pavement, the sum of one (1) dollar.

Concrete pavement. For each square yard of street with Portland cement concrete pavement, the sum of two (2) dollars.

Macadam. For each square yard of street with bituminous macadam pavement, the sum of two (2) dollars.

For each square yard of street without pavement, the sum of twenty-five (25) cents.

In addition to the above charges, in cases where the foundation under brick pavement is of concrete, a charge of seventy-five (75) cents per square yard shall be added to the above charge for brick pavement, and in cases where joints are of tar, a charge of twenty-five (25) cents per square yard shall be added to the above charges.

Additional charges. In addition to the above charges for laying six inch terra cotta pipe, in work where rock is encountered in the excavation, the actual cost of removing rock shall be added to the above charges.

For inspection the sum of forty (40) cents per hour.

Adopted August 17, 1909.

A RESOLUTION declaring defective sidewalks to be a nuisance.

Be it resolved, by the Board of Directors of the Street and Sewer Department:

Defective sidewalks a nuisance. SECTION 1. That every sidewalk or footway in the City of Wilmington by law required to be paved, which shall become uneven, rough, or in which there shall be holes caused by the wear or removal of the material of which it is com-

posed; or in which there shall be loose bricks; or which shall become broken or thrown into ridges or forced out of its normal position by trees, tree roots or frost, or, in the judgment of the Street and Sewer Department, shall be unfit for use as a footway or passage by reason of being covered with weeds, mud, dirt, filth or other objectionable matter or is out of proper condition from any other cause, natural or artificial, the same shall thereby be and become and is hereby declared to be a nuisance, and any person or corporation owning, or agent in charge of, the premises abutting on said defective sidewalk or footway, and allowing the said defects to continue, (*a*) shall be deemed guilty of a nuisance, and shall, upon conviction thereof in the Municipal Court of the City of Wilmington, be punished by a fine of not less than two nor more than ten dollars, for every twenty-four hours that such nuisance continues.

Penalty for maintaining such nuisance.

(*a*) This Resolution makes one subject to a *fine* for maintaining, among other things, a defective sidewalk. If the defective condition thereof be not "caused by the city or any of its authorized agents," and the owner neglect to repair the same, after notice to do so by the Street and Sewer Department, he will also be liable in damages to one injured by reason thereof.

Fleith vs. Cunningham, (yr. 1908) unreported. Cont. Dock. I, p. 516. See Sec. 121 "a," par. 3 of the Charter.

SEC. 2. All ordinances, resolutions or parts thereof inconsistent herewith are hereby repealed.

Adopted March 26, 1907.

A RESOLUTION concerning the unpaved spaces of sidewalks in the City of Wilmington.

Be it resolved, by the Board of Directors of the Street and Sewer Department:

SECTION 1. That no person or persons shall trespass upon, cut, break or in anywise injure or deface the grass, plants or trees on the unpaved parts of the spaces between the curb lines and the property lines of any sidewalk in the City of Wilmington.

Injuring of grass or plants prohibited.

SEC. 2. Any person violating the above resolution shall, upon conviction thereof, before the Municipal Court, pay a

Penalty.

fine not exceeding five dollars ($5.00) for each and every offence.

Adopted July 28, 1896.

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[1]*A RESOLUTION to employ an assistant clerk.*

Duties of clerk.

Be it resolved, that this board employ an Assistant Clerk for this department, whose duties shall be to assist the Secretary, and make collections of liens and other claims due the city, and make daily reports of the same to the Secretary. He

Salary.

will be employed by the month, the salary to be sixty dollars

Bond.

per month, and will be required to give bond with approved security in the sum of one thousand dollars.

Adopted March 30, 1892.

A RESOLUTION providing regulations to govern the construction of cement sidewalks and cement concrete curb, within the limits of the City of Wilmington, Delaware.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, Delaware:

Sidewalks in front of improved property to be of Portland cement concrete.

SECTION 1. That from and after the passage of this resolution all new sidewalks to be laid on the streets of the City of Wilmington, in front of property whereon is erected any dwelling house, office, place of business, railing, fence, stone or brick wall, or permanent structure of any kind, shall be of Portland cement concrete, and the repairing, renewing or altering of any and all sidewalks constructed and laid on the streets of the City of Wilmington at the time of the passage of this resolution, when the repairs, renewals or alterations re-

1. The Board of Directors of the Street and Sewer Department by resolution adopted May 1, 1900, provided that the bookkeeper should be known as "Assistant Secretary." See page 1034 of this volume.

quire the use or removal of at least two-thirds ($\frac{2}{3}$) of the material composing the surface of the sidewalks to be repaired, renewed or altered, shall be repaired, renewed or altered by laying a Portland cement concrete sidewalk, and all Portland cement concrete sidewalks shall be constructed in accordance with specifications and plans approved by the Street and Sewer Department.

When repairs are made, sidewalk is to be of Portland cement concrete.

SEC. 2. Cement concrete curb may be constructed only upon application to and by the approval of the Street and Sewer Department, and upon approval of the Street and Sewer Department of any such application, a certificate to that effect shall be issued to the Chief Engineer and Surveyor by the Street Commissioner. The applicant shall conform to all rules and regulations of the Department of Engineering and Surveying relating to the setting of curb.

Portland cement concrete curb may be laid upon approval of Street and Sewer Department.

SEC. 3. The construction of all such sidewalk and curb shall be subject to the supervision and approval of the Street Commissioner.

Street Commissioner to supervise work.

Whenever a sidewalk is to be laid, repaired, renewed or altered, a permit therefor shall be issued by the Street Commissioner without charge, upon application of the owner or owners of property abutting the sidewalk to be laid, repaired, renewed or altered, and no sidewalk shall be laid, repaired, renewed or altered without a permit has been issued as aforesaid.

Permits shall be issued for all work.

SEC. 4. Upon completion of the construction of all such sidewalk and curb, an inspection shall be made by the Street Commissioner, and if found in accordance with the provisions of this resolution, he shall issue a certificate to that effect to the applicant, but if found otherwise Section 5 of this resolution shall govern.

Upon completion, inspection by Street Commissioner.

SEC. 5. Any person or persons, agent, company, corporation or concern violating any of the provisions of this resolution shall be subject to a penalty equivalent to one dollar for each square yard of sidewalk and fifty cents for each lineal

Penalties for violations.

foot of curb, laid in violation of this resolution. The same to be recovered and collected at the suit of a member or officers of the Street and Sewer Department upon conviction before the Municipal Court of the said City of Wilmington.

SEC. 6. This resolution is passed subject to all the requirements of the City Charter relating to the setting of curb and laying of sidewalks.

SEC. 7. All ordinances or resolutions or parts of the same inconsistent herewith be and the same are hereby superseded.

Adopted March 23, 1909.

A RESOLUTION fixing price for furnishing and setting curb stones.

Rate of curb lines.

Resolved, That the charges for curb stone set by the Street and Sewer Department, within the limits of the city, shall be lienied against the abutting property at the rate of sixty-five cents (65c) per lineal foot.

Adopted May 12, 1896.

A RESOLUTION in relation to curved curb corners at intersections of streets in the City of Wilmington, Delaware.

Be it resolved, by the Board of Directors of the Street and Sewer Department:

Radius of curved curbs determined by Board.

SECTION 1. That from and after the passage of this resolution the sidewalks at all street corners where curb is to be set, shall be bounded by curb cut to a radius of such length as shall be determined by the Board of Directors of the Street and Sewer Department, at the time that permission is granted or orders given to set such curb.

SEC. 2. That all ordinances or resolutions or parts of the same inconsistent herewith, be and the same are hereby superseded.

Adopted September 17, 1895.

A RESOLUTION in relation to setting or resetting curb stone within the limits of the city.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington:

SECTION 1. From and after the passage of this resolution, all curb stone which may be set or reset within the limits of this city shall be at least five (5) feet in length, twenty-two (22) inches in depth and five (5) inches in thickness, and to be of uniform width and thickness. The faces and edges of the stone must be straight, even, and their ends so finished that they may be set closely against each other for at least half their depth, and smooth on the face to a depth of twelve (12) inches so that gutter stone may be set closely against them, also smooth on back to a depth of four (4) to six (6) inches so that pavement may be set closely against them, and the top cut with a wash to suit grade of pavement. New curb after delivery on street shall be inspected by an authorized officer of this Department before being set, and a certificate of approval furnished the owner. In setting or resetting curb, there shall be good, flat bedding stones of not less than three (3) inches in thickness and the equivalent of bearing surface used under each curb to secure the proper permanent grade, and it shall be securely fastened by ramming other stone on front and back of said curb to keep it in proper line and permanent position. The excavation shall not be filled in until properly inspected by an authorized officer of the Street and Sewer Department, and a certificate approving the setting of same furnished in form designated by said Department.

Dimensions of curb stones.

New curb to be inspected.

Curb foundations.

Certificate.

SEC. 2. Concrete curb and gutter may be set upon application of property owner and by approval of the Street and Sewer Department, to be laid in accordance with plans and specifications furnished by the Department.

Concrete curbs and gutters.

SEC. 3. Any person or persons, company, corporation or concern violating the provisions of this resolution shall be subject to a penalty equivalent to twenty-five (25) cents for each foot of curb laid in violation of this resolution. The same to

Penalty.

be recovered and collected at the suit of a member or officer of the Street and Sewer Department upon conviction before the Municipal Court of the City of Wilmington.

SEC. 4. All ordinances or resolutions inconsistent herewith are hereby superseded and repealed.

Approved May 22, 1905.

A RESOLUTION regulating the street markets of the City of Wilmington.

Sale of hay, &c., on streets prohibited.

SECTION 1. That it shall not be lawful on or after the first day of June, 1889, for any person or persons having under his, her, or their control any wagon or wagons loaded with hay, straw or corn-fodder to stand such wagon or wagons in or upon any of the avenues or streets of this city for the purpose of exposing such hay, straw or corn-fodder for sale.

Penalty.

Any person or persons who shall offend against the provisions of this section shall be guilty of a common nuisance, and upon conviction thereof shall forfeit and pay a fine of five dollars.

Adopted May 7, 1889.

A RESOLUTION with reference to street markets.

Be it resolved, by the Board of Directors of the Street and Sewer Department of Wilmington, Delaware:

Permission to use sidewalks for markets.

That no person or persons or corporation shall occupy or use for any purpose whatsoever any sidewalk or street bed of any street or streets dedicated and set apart for "market" purposes, without first obtaining lawful permission so to do from the Clerk of the Market.

Adopted December 13, 1894.

A RESOLUTION setting apart sections of certain streets for the exhibition and sale of Christmas trees.

Be it resolved, by the Board of Directors of the Street and Sewer Department:

Street market for Christmas trees.

SECTION 1. That Fourth street between French and Walnut streets; Fourth street between Shipley and Tatnall streets and south side of Fourth street between Jefferson and Madison streets and south side of Tenth street between King and Market streets, be set aside from the first day of December to the first day of January, for the display and sale of Christmas trees.

Penalty for using other streets.

SEC. 2. That any person or persons displaying or selling Christmas trees on streets, other than those above named, shall be subject to a fine of ($5.00) five dollars for each and every offense, and if said person or persons fail to remove said trees from said streets within (5) hours after notice to him so to do by the Clerk of the Market, the said Clerk may himself or by deputy remove the same and carry them to a place of safety, there to be kept until the expense attached to the same, by reason of said removal, be first paid by the owner or owners thereof.

Adopted December 10, 1895.

A RESOLUTION to regulate the erection of oriel or bay windows, porches, stoops, cellar doors, areaways, awnings, etc.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington:

Resolution, Street and Sewer Directors, May 28, 1907.

Certain bay windows prohibited.

SECTION 1.[1] [No oriel or bay or bulk windows, (*a*) balconies or porches projecting beyond the true building line of any street shall hereafter be erected, extended, altered or repaired (except as to resetting broken glass) upon the first story of any building, except that porches may be built

1. See Sec. 2 of Resolution of Street and Sewer Department, March 10, 1908, as to porches and other structures, p. 1017 of this volume.

and maintained in connection with the fronts of buildings used exclusively as places of residence and which have been erected and completed prior to the passage of this ordinance,

Exception as to porches on residences.

provided, however, that such porches shall not extend out over the sidewalk and beyond the building line more than one-third the width of said sidewalk, but in no instance shall such porches extend more than four feet over the line of said sidewalk,

Proviso.

provided, further, that no porches shall be erected over any part of the sidewalk in front of any now existing building if a majority of the buildings on the same front of the building block shall be used as places of business, (*b*) but the provisions of this ordinance are only intended for and shall be availed of for the benefit of residences in front of which no porches now exist.]

(*a*) This Resolution prohibits bay windows beyond the building line. In the case below cited, the Court of Chancery refused to *restrain* one from erecting a bay window beyond the line fixed by law, unless the bay window would "materially and substantially interrupt or impede the public use of the same as a street or highway." (500) Syllabus.

The remedy, in such a case, is by indictment by the Attorney-General. (505)

The Chancellor: "The sidewalks of the city are for the free passage of the people, * * In a clear case of substantial and material encroachment upon a public street or highway, of such a character as to seriously interfere with its use, I would consider it my duty to act without the aid of a jury; but where the encroachment, although illegal, is not of that character, the proper tribunal is a court of law, which has full power, not only to punish the offender, but to abate the nuisance."

Gray vs. Baynard, 5 Del. Ch. 499 at 505. (yr. 1883)

(*b*) This Resolution was passed in 1907. In 1906 the defendant below named, was prosecuted for erecting a porch beyond the building line. The ordinance under which the prosecution was had, was passed in 1893 (Charter, Laws and Ordinances, 1893, p. 546, Sec. 1). The Municipal Court decided the old ordinance of May 10, 1800 (Charter, Laws and Ordinances, 1893, p. 475, Sec. 5) had not been repealed in accordance with the Charter provisions, and dismissed the case.

Wilmington vs. McNabb. (yr. 1906). Munic. Ct. Decision final.

The above ordinance allows porches in "residence" blocks, but not where a *majority* of the buildings are used as places of business. See the case of

Wilmington vs. Davis (1910), page 1017 of this volume.

Resolution, Street and Sewer Department, July 24, 1906.

[SEC. 2.[1] Oriel or bay windows may hereafter be erected upon the fronts, sides and rear ends of buildings, extending

1. See Sec. 2 of Resolution of Street and Sewer Department, March 10, 1908, as to porches and other structures, p. 1017 of this volume.

over the pavements of the streets from any story excepting the first, provided in each case the outside faces thereof shall be within lines drawn from the corners of the building lot at an angle of twenty degrees with the street building line, and within a line parallel with the street building line and distant three feet therefrom.

Oriel and other windows above the first floor.

In similar situations, open balconies or porches may be erected provided in each case the floor thereof shall be within lines drawn from the corners of the building lot at an angle of twenty degrees with the street building line, and where the street is not less than sixty feet in width within a line parallel with the street building line and distant five feet therefrom, and where the street is less than sixty feet in width within a line parallel with the street building line and distant eight one-hundredths of the width of the street therefrom. Mouldings, cornices and other projections of windows, balconies or porches shall not extend more than six inches beyond the lines above mentioned. The bottom of all such constructions shall be at least ten feet above the pavement or sidewalk at is proper grade.]

Limitation as to balconies.

SEC. 3.[1] Oriel or bay windows, balconies or porches may hereafter be erected on the corners of buildings beyond the true building line of the streets from any story excepting the first, *provided* their outside faces shall be built within a true circle whose circumference passes within lines eighteen inches outside of said true building line and parallel therewith, and that all mouldings, cornices, and other projections shall not extend more than six inches beyond said circumference, and provided the bottom of such construction shall be at least ten feet above the pavement or sidewalk at its proper grade.

Oriel windows on corners of buildings.

Repealed by resolution of Street and Sewer Department, March 10, 1908.

SEC. 4. * * * * * * * * *

SEC. 5. It shall not be lawful for any person to hereafter

Flap wing or side awning prohibited.

1. See Sec. 2 of Resolution of Street and Sewer Department, March 10, 1908, as to porches and other structures, p. 1017 of this volume.

erect over or across any sidewalk, any flap wing or side awning of any description.

Penalty.

SEC. 6. Any person violating any of the provisions of this resolution shall be guilty of a common nuisance and shall be liable to a fine of five dollars and an additional fine of five dollars for every twenty-four hours that such nuisance is continued.

SEC. 7. All ordinances and resolutions inconsistent herewith are hereby repealed.

Adopted June 19, 1906.

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[1]*A RESOLUTION prohibiting the construction or maintenance of areaways, cellarways, passage ways or uncovered openings or door steps or approaches to buildings on the sidewalk under certain conditions.*

WHEREAS, The sidewalks of Market street and certain other business thoroughfares of this city are too narrow for the needs and conveniences of the traffic upon them and in addition are seriously and unreasonably encroached upon by cellar ways, doorsteps and other obstructions.

Therefore be it resolved, by the Board of Directors of the Street and Sewer Department:

Areaways, prohibited within sidewalk lines.

SECTION 1. That hereafter no areaways, (*a*) cellarways, passage ways or uncovered openings shall be constructed or maintained on the sidewalk or within the sidewalk lines of any part of this city.

(*a*) Under Sec. 1 of the above ordinance the defendant below named was prosecuted for constructing a "lift" or elevator in the sidewalk in front of her premises and within 4 feet of the building line. Remarks of the Judge during the trial of the case, showed so clearly that the resolution would be declared void on the ground of its being *unreasonable,* that the case was withdrawn.
Wilmington vs. Jenny. (yr. 1907). Munic. Ct. (Decision final.)

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1. See also Resolution of Street and Sewer Department, June 19, 1906, p. 1013 of this volume.

SEC. 2. That hereafter no doorsteps, (a) porches, approaches to buildings or other structures shall be built, made, maintained or repaired on the sidewalks or within the sidewalk lines fronting or facing any building block of this city where a majority of the buildings in said building block abutting on said sidewalk shall be used as stores, halls, hotels, places of business or amusement or any such purposes or for other purposes other than solely as places of residence. Doorsteps, &c., prohibited in certain blocks.

(a) In the case below cited the defendant was prosecuted for building steps in front of his premises. The Court decided that the ordinance was *unreasonable*; it also held, as the ordinance left the right to build, to depend upon the fluctuating whim or caprice of the property owners of any square, and that the building or buildings to be built could be "residences" or "business" houses, at the option of the person building, that it was *uncertain*, as a "majority" might be "business" houses one month, and "residence" houses the next month. It also decided that the ordinance was *discriminating*, and for the above and other reasons held the same to be void.

Wilmington vs. Davis. (yr. 1910). Munic. Ct. Decision final.

SEC. 3. Any person or persons, firm or corporation violating any of the provisions of this resolution shall be guilty of a common nuisance and shall be liable to a fine of five dollars ($5.00) and an additional fine of five dollars ($5.00) for every twenty-four hours that such nuisance is continued. Penalty.

SEC. 4. That all ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed.

Adopted March 10, 1908.

A RESOLUTION regulating the extension of steps, cellar doors and other inlets to buildings on the northerly side of Pennsylvania avenue between Lincoln and Union streets in the City of Wilmington, Delaware.

Be it resolved, by the Board of Directors of the Street and Sewer Department:

SECTION 1. That no step, cellar door or other inlet to any building now erected or that may hereafter be erected on the northerly side of Pennsylvania avenue between Lincoln and Union streets, shall extend on the footway or sidewalk more than seven (7) feet (a) from the building line of the said Limit on steps, &c., on part of Pennsylvania avenue.

northerly side of the aforesaid avenue between the aforesaid streets.

(*a*) The owners of properties living in the above square are permitted to come out 7 feet. The general ordinance allows 4 feet. Section 31 of the Charter prohibits the passing of any special exemption ordinance. And see Sec. 5 of the ordinance of May 10, 1800, p. 938, and Sec. 124 of the charter. See also Sec. 1, p. 1016 of this volume.

SEC. 2. That all ordinances or resolutions or parts of the same inconsistent herewith be and the same are hereby superseded.

Adopted March 18, 1902.

RESOLUTION that no deed for street beds to be accepted until streets are brought to grade and curbed, except on public necessity.

WHEREAS, Many demands are being made on this Department for grading and repairing of streets where the benefits are practically for individuals and not a public necessity, and

WHEREAS, Such work has become a burden and a large drain on the revenues of this Board, therefore

Title to graded streets only to be accepted.

Resolved, That in the future, no title to street bed be accepted by this Department, except on public necessity, until such streets are brought to grade and curbed.

Adopted April 15, 1902.

A RESOLUTION repealing ordinances now in force in the City of Wilmington, relating to snow and ice on public footways and sidewalks of said city and enacting a substitute therefor.

Resolution of Jan. 9, 1900, repealed.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, Delaware, that the substitute for the then existing ordinances adopted by resolution of this Board January 9, 1900, be and the same is hereby repealed, and that the following be and the same is hereby enacted as a stubstitute therefor:

Removal of ice required within 10 working hours.

SECTION 1. It shall be the duty of every tenant or occupant or if there be no tenant or occupant then of the owner or agent for same, of any real estate situated within the limits of said City of Wilmington to remove within ten (10) working hours after its formation, any ice which may be formed or caused by the drainage or overflow from such properties, whether the nuisance be situated on the same or adjoining properties.

Removal of snow required within 10 working hours.

SEC. 2. it shall be unlawful for the tenant or occupant, or if there be no tenant or occupant, then of the owner or agent of any real estate within the City of Wilmington to suffer or permit snow to remain more than ten (10) working hours after the same may cease to fall, on any pavement, footway or gutter of the city, in front of or adjoining any church, public building, house, store, shop, stable or tenement of any kind or the adjoining sideyard thereof or of vacant lots.

Snow or ice to be removed from public sidewalks, &c.

SEC. 3. It shall be the duty of every person, corporation or firm to at once remove from any public sidewalk, gutter or footway, within the limits of said city, any snow or ice which he, it or they may have deposited, permitted or caused to form thereon or therein.

Departments of the city required to remove snow and ice from public property.

SEC. 4. It shall be the duty of the officers, agents and servants of any of the various departments of the City of Wilmington, who shall have charge or superintendence of any properties owned by the city to remove or cause to be removed, at the expense of the proper department, from the public footways, sidewalks and gutters, upon and adjoining such properties, all snow and ice in like manner and under like penalties as herein provided for private persons.

Defining "agent or person in charge" of properties.

SEC. 5. When any person, firm or corporation has any bill board, sign or card upon any property within the said city announcing that he, they or it has control or charge thereof, either for the renting, care, sale or exchange thereof, and there shall at the same time be neither tenant or occupant thereof such person, firm or corporation shall be deemed the agent or

person in charge thereof within the meaning of the provisions of this resolution.

SEC. 6. Every person, firm or corporation failing, neglecting or refusing to perform any duty required by the foregoing sections hereof shall be guilty of committing and maintaining a public nuisance and shall upon conviction thereof in the Municipal Court of said city be punished by a fine of not less than two or more than ten dollars.

Penalty.

Adopted February 2, 1904.

A RESOLUTION in relation to coasting, sliding and sledding on the footways or sidewalks.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, Delaware:

Unlawful to use sidewalks for coasting, sliding or sledding.

That, it shall not be lawful for any person or persons to use the footways or sidewalks (*a*) of any of the public streets of this city for the purpose of coasting, sliding or sledding thereon.

(*a*) This ordinance relates to the *sidewalks.* The ordinance following relates to the "*streets.*"

Penalty.

Every person offending against the provisions of this resolution shall forfeit and pay a fine of five dollars.

Adopted January 16, 1900.

A RESOLUTION in relation to coasting on the public streets.

Be it resolved, by the Street and Sewer Department of the City of Wilmington:

Coasting on streets.

That it shall not be lawful for any person or persons to use the bed of any of the public streets of this city for the purpose of coasting or sledding thereon. (*a*)

(*a*) It is the duty of the city to enforce the above ordinance, but it is not liable for damages to one injured by being run into by one with a

sled. Police officers in enforcing the above ordinance act really as *State* officers. The duty is a *public* duty.

Wolcott, Ch.: "* * * it is such a duty as relates to the execution of a State law, and the officers charged therewith, though servants of the municipality, are, to the extent of such duty, public officers, and for the neglect to perform the same no municipal liability attaches."

Mayor and Council of Wil. vs. Vandegrift, 1 Marv. 5 at 18. (yr. 1893)

The above ordinance was passed in 1888. The above case was decided by the Superior Court in 1892. The Chancellor seemed to assume as true the attorney's contention, that, "no ordinance was ever passed against the practice of coasting," &c., p. 18. The Chancellor decided, however, that sledding was a violation of Sec. 3 of the ordinance relating to nuisances (p. 744 of this volume). This ordinance related to leaving wagons, &c., in the street.

Every person offending against the provisions of this resolution shall forfeit and pay a fine of five dollars. Penalty.

Adopted January 31, 1888.

A RESOLUTION prohibiting roller skating and coasting with wagons or wheels on the public sidewalks.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, Delaware:

SECTION 1. That from and after the passage of this resolution it shall not be lawful for any person or persons to use the sidewalk or footway of any of the public streets of this city for the purpose of roller skating or coasting with wagons or wheels of any description. Roller skating or roller coasting prohibited.

SEC. 2. Any person or persons so offending against the provisions of this resolution shall be deemed guilty of a common nuisance and shall upon conviction thereof before the Municipal Court forfeit and pay a fine of not more than five dollars nor less than one dollar for the first offense, and for the second offense the maximum penalty provided for herein shall be imposed. Penalty.

Adopted January 8, 1907.

A RESOLUTION with reference to bicycles, etc.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington:

That the following rules (*a*) and regulations for the governance of the city streets and sidewalks be adopted.

(*a*) As to the meaning of the word "rules" see the case of Morris et al vs. Pilot Coms., 7 Del. Ch. 136. (yr. 1894)
See Sec. 76 "a" of the Charter.

Cycles must display light, also have bell.

SECTION 1. All cycles, bicycles and tricycles in motion after sundown shall display a suitable light, and also have a gong or bell so attached thereto as to be readily sounded to warn persons of their approach.

Limit of speed.

SEC. 2. No cycle, bicycle or tricycle shall move at a greater rate of speed than seven miles (*a*) an hour when passing over or upon any street, highway or bridge and shall sound a bell or gong when necessary[1] to warn persons of their approach.

(*a*) If a bicycle rider violate the speed limit, and is injured as the direct result thereof, he cannot recover.

Lore, C. J.: "If you are satisfied from the evidence, that, at the time of the accident, * was riding at a greater rate of speed than seven miles an hour, the maximum speed permitted to bicyclists by city regulations, and that the accident resulted from such excessive speed, he cannot recover," &c.

Anderson vs. Mayor and Council of Wil., 2 Penn. 28 at 31. (yr. 1899)

(In the above case a bicycle rider rode into a wire stretched across the street for the benefit of a sick person.)

In the case below cited a bicycle rider was racing with one driving a horse. The driver ran into and injured a person on the street. The law as to negligence, laid down as to the driver of the horse, of course, would apply to the bicycle rider as well.

Ford vs. Whiteman, 2 Penn. 355 at 357. (yr. 1899)

Penalty.

Amended by resolution of Street and Sewer Directors, July 11, 1899.

SEC. 3. Any person violating the provisions of these rules and regulations shall on conviction in the Municipal Court forfeit and pay a fine of not less than [five] dollars nor more than ten dollars, besides costs of prosecution.

Adopted October 30, 1894.

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1. See Sec. 3 of Resolution of May 4, 1897, p. 1023 of this volume.

A RESOLUTION concerning bicycles.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington:

Cycles on sidewalks prohibited.

SECTION 1. That from and after the passage of this resolution it shall be unlawful for any person or persons to ride any bicycle along any of the pavements or sidewalks within the limits of the city, as they now exist or may hereafter be extended. [Except the sidewalk on the easterly side of Church street between Tenth and Eleventh street and both sides of Eleventh street from Church to Heald streets and south side of Pullman street from Heald street to Railroad avenue, which may be used between the hours of from 6 to 7 o'clock A. M. and 12 to 1 and 5 to 7 o'clock P. M.]

Amended by resolution of Street and Sewer Department, Aug. 24, 1897.

Exception.

Keep to right of road.

SEC. 2. That any person or persons riding a bicycle along any of the streets or highways within the limits of the city as they now exist or may hereafter be extended, shall, while so doing, keep to the right (*a*) of said streets or highways.

(*a*) As to the law of the road, which applies to persons on foot, to vehicles and to steamboats, all alike, see pp. 199-200 of this volume.

Cycles passing pedestrians.

SEC. 3. That any person riding a bicycle along any of the streets or highways within the limits of the city as they now exist or may hereafter be extended, shall, on, or immediately prior to the passing of any other person or persons riding as aforesaid sound the bell of said bicycle.

Penalty.

SEC. 4. Any person violating the provisions of these rules and regulations, shall on conviction in the Municipal Court, forfeit and pay a fine of not less than [five] dollars nor more than ten dollars, besides cost of prosecution.

Amended by resolution Street and Sewer Directors, July 11, 1899.

Adopted May 4, 1897.

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[1]*A RESOLUTION relating to the right of way of ambulances.*

Be it resolved, by the Board of Directors of the Street and Sewer Department:

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1. See ordinance, p. 986 of this volume.

Right of way for ambulance.

SECTION 1. That ambulances shall have the right of way, (a) when responding to calls, or when conveying sick or injured persons along the streets of the City of Wilmington.

(a) While the ambulance (like a fire engine) has the right of way, it must not go at an immoderate rate of speed through the streets of the city.

Lore, C. J.: "Under the ordinance he has the right of way, but in other respects he is subject to precisely the same rules as other travellers, that is, in driving on the street he must use his senses, and take reasonable care and caution to avoid danger, and to prevent injury to himself and to others."

Carswell, Admr. vs. Wilmington, 2 Marv. 360 at 365. (yr. 1897)
(The above case was that of a driver of a fire engine, racing.)

Penalty for obstructing ambulance.

SEC. 2. That the motorman of any car or the driver of any vehicle of any kind whatsoever, or any other person or persons in any way obstructing, delaying or in any manner interfering with ambulances, while responding to calls or when conveying sick or injured persons along the streets of the City of Wilmington, shall, upon conviction thereof before the Judge of the Municipal Court, be fined not less than five (5) dollars, nor more than ten (10) dollars, for each and every offence.

Adopted June 28, 1904.

A RESOLUTION to require street railway cars to be equipped with fenders and wheel guards for the protection of life and limb.

Be it resolved, by the Board of Directors of the Street and Sewer Department as follows:

SECTION 1. That every person, company, corporation or association owning, controlling, managing or operating any street railway within the limits of the City of Wilmington, shall, within forty-five days after the passage of this resolution, cause each and every car of said street railway, so owned, controlled, managed or operated, to be equipped and provided with suitable and proper fenders (a) and wheel guards to protect persons using the streets from injury by being thrown or drawn under the wheels of such car or from being run over by such car. Such fenders and wheel guards shall be of a design

Fenders and wheel guards on railway cars required.

which the Board of Directors shall have certified in writing, meets with its approval, and said certificate of approval shall be filed in the office of the Secretary of the said Board of Directors of the Street and Sewer Department.

Design to be approved by Board.

(a) "The Council" passed an ordinance similar to the above Resolution, and the Court decided that the right to pass a "fender" ordinance, or resolution, belonged to the Street and Sewer Department and not to "The Council."

"The power and authority to enact ordinances and resolutions requiring and regulating the use of certain safety appliances called fenders, on trolley cars operated in and upon the streets of the City of Wilmington, is vested in the Board of Directors of the Street and Sewer Department, and not in the Council of said city."

Bullock's Admir. vs. W. C. Ry., 5 Penn. 209. (yr. 1905). Syllabus.

Board required to pass upon design and suitability.

SEC. 2. It shall be the duty of the Board of Directors of the Street and Sewer Department to pass upon the design and suitability of such fenders and wheel guards submitted to it by any person, company, corporation or association owning, controlling, managing or operating any street railway within the limits of the City of Wilmington, and the Board of Directors of the Street and Sewer Department, after having first carefully considered all the advantages and disadvantages of said design of fenders and wheel guards, shall give such person, company, corporation or association a certified copy of its certificate of approval or disapproval of such design; and no system of fenders and wheel guards shall be used on any street car within the City of Wilmington, unless it shall first have been submitted to the Board of Directors of the Street and Sewer Department aforesaid, and shall have received its written approval, as aforesaid.

No fenders or wheel guards to be used unless approved.

SEC. 3. Any person, company, corporation or association operating any street cars in the City of Wilmington, not equipped with fenders and wheel guards, as hereinbefore provided for, upon and after the expiration of forty-five (45) days from the passage of this ordinance, shall upon conviction thereof in the Municipal Court, be fined not less than five dollars ($5.00) nor more than twenty-five dollars ($25.00) for each and every offence, said fines to be collected as other fines are collected for offences against the ordinances of the City of Wilmington. Every day's violation of any of the provisions of this ordinance shall constitute a separate offence.

Penalty.

Must be kept in good repair.

SEC. 4. All fenders and wheel guards must be kept in thorough working order and in good repair when in use. Any person, company, corporation or association operating any street cars in the City of Wilmington, failing to comply with any of the provisions of this section shall upon conviction thereof in the Municipal Court be subject to a fine of five dollars ($5.00) a day for each and every offence.

Penalty for neglect.

Motormen or conductors shall not operate cars unless equipped as required.

SEC. 5. No motorman or conductor shall operate or have in charge any street railway car within the limits of the City of Wilmington that is not fully equipped with fenders and wheel guards, as provided for in Section 1 of this ordinance, and any motorman or conductor operating or being in charge of any such car, not so equipped shall upon conviction thereof in the Municipal Court be punished by a fine not to exceed five dollars ($5.00) for each and every offence.

Penalty.

SEC. 6. This resolution shall take effect and be in force from and after its passage and all ordinances or parts of ordinances inconsistent herewith, are hereby repealed.

Adopted April 12, 1904.

A RESOLUTION requiring street car companies operating in the City of Wilmington to sprinkle streets.

Be it resolved, by the Board of Directors of the Street and Sewer Department in the City of Wilmington:

Street beds on which railways are operated to be sprinkled.

SECTION 1. That every person, company or corporation operating a street railway within the limits of the City of Wilmington shall sprinkle freely with water, from curb to curb, the bed of all streets on which its tracks are laid.

On streets exceeding 40 feet in width.

In cases, however, where the width of the street from curb to curb is greater than forty feet, the said street beds shall be so sprinkled for a distance of at least twenty feet in width on each side of the centre of the railway tracks. All sprinkling shall be done in a manner to keep the dust thoroughly laid.

Said streets shall be sprinkled not less than twice daily between the hours of 7 o'clock A. M. and 5 o'clock P. M., from the first day of April to the first day of November in each and every year. *Provided, however,* that the requirements of this resolution may be waived by the Street and Sewer Department on such days as there shall be sufficient rain fall to keep the dust thoroughly laid upon said streets. Twice daily, from April to November.

SEC. 2. Any person, company or corporation operating a street railway company in violation of Section 1 of this resolution shall, upon conviction thereupon, before the Judge of the Municipal Court, be fined not less than ten (10) dollars nor more than fifty (50) dollars, and each and every day when the tracks are not sprinkled as aforesaid shall constitute a new and separate offence. Penalty for violation.

SEC. 3. All ordinances or resolutions inconsistent herewith are hereby superseded and repealed.

Approved July 24, 1908.

A RESOLUTION to prevent the unnecessary blocking of street cars and passengers by wagons and other vehicles.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, Delaware:

SECTION 1. No person[1] shall unnecessarily or wilfully obstruct (*a*) in any manner whatever the passage of any passenger or freight car over or upon the track of any railroad company or corporation in any street, square or highway. Blocking of cars prohibited.

(*a*) Aside from the above ordinance it is the duty of persons on foot, and in vehicles, not to obstruct, or unnecessarily delay street railway cars. The cars have a *superior* right of way on their tracks, as they can't move outside them; but they cannot, on that account *abuse* that right. The right is thus expressed:

Lore, C. J.: "The public were entitled to use every part of the street. The electric cars, of necessity, could use only those parts of it covered by their tracks, * * within fixed lines. Within those lines the right of the company is superior to that of other users, and must not be unnecessarily interfered with or obstructed. Such unob-

1. See Sec. 34, Resolution March 26, 1901, p. 1051 of this volume.

structed use is daily becoming more and more a necessity, in meeting the needs of rapid transit and public convenience in large and growing cities. * * The many people who use electric cars for business and other purposes, are entitled to free and uninterrupted transit in and about our city.''

Brown vs. W. C. Ry. Co., 1 Penn. 332 at 335. (yr. 1898)

On the question of the *abuse* of that superior right the Court said:

Spruance, J.: ''The broad assertion of the superior right of a railway company may be subject to abuse, and should not be understood as exempting it in any case from the exercise of due and proper care. It would be a fearful doctrine that persons in charge of street cars have the right to run down persons or vehicles whenever upon the track, even when there unlawfully or negligently,'' &c.

Price vs. Warner Co., 1 Penn. 462 at 471-2. (yr. 1899)

See generally on the question of superior right and non-obstruction, the following cases:

Maxwell vs. W. C. Ry., 1 Marv. 199 at 205-6. (yr. 1893)
Higgins vs. W. C. Ry., 1 Marv. 352 at 358. (yr. 1895)
Farley vs. W. & N. C. E. Ry., 3 Penn. 581 at 583. (yr. 1902)
Snyder vs. Peoples Ry., 4 Penn. 145 at 149-150. (yr. 1902)
Cox vs. W. C. Ry., 4 Penn., 162 at 164. (yr. 1902)
Wilman vs. Peoples Ry., 4 Penn. 260 at 263. (yr. 1903)
Di Prisco vs. W. C. Ry., 4 Penn. 527 at 532. (yr. 1904)

Coal wagons not to obstruct.

SEC. 2. No owner, driver or other person having charge of any wagon or other vehicle from which coal, coke or other fuel is being delivered in any street of this city in which car tracks are laid shall place the wagon or vehicle in such position as to delay street cars. Deliveries of coal, coke or other fuel in such streets shall be made in bags, baskets or from side chute wagons.

Loading or unloading of wagons limited.

SEC. 3. No owner, driver or other person having charge of any vehicle shall stop the same nor suffer the same to be stopped, so as to obstruct the passage of a car upon the track of any railroad company laid in any street, except for the purpose of placing upon or taking from such vehicle some article of merchandise of such weight and bulk as to prevent its being done in any other manner, and then only during the time that such article is being actually placed upon or taken from such vehicle.

Cars not in use not to remain on street.

SEC. 4. No car used for the transportation of freight or merchandise shall be allowed to remain upon the main track (a) of any railroad in any street for any longer time than is actually necessary to load or unload such car, and no

car of any description shall be stored or allowed to remain upon any street when not in use.

(*a*) The object of this section (and also Sec. 1 above) is to prevent any unnecessary obstructing of public travel on the streets. The above section speaks of the "main line." In the case below cited, a car had been on a *switch* or *turnout*, and the Court said:

Robinson, C. J.: "They" (the street railway company) "had a right to keep car No. 16 a reasonable time on this turn-out, so that car No. 10 might pass it, or for any other purpose necessary and proper for using their cars, and we do not think the ordinance cited by the learned counsel deprives them of that right."

Ford vs. Warner Co. 1 Marv. 88 at 92. (yr. 1893)

See Sec. 12, par. 4 of ordinance of October 30, 1856, prohibiting steam railroads to obstruct streets more than 10 minutes, except in case of accident. (Page 756 of this volume.)

Exception as to previous section.

SEC. 5. The provisions of Sections 2 and 3 of this resolution shall not apply to the part of any street where the rails of the street railway are in such position as not to allow a wagon or other vehicle to stand parallel with the curb, while loading or unloading, without interfering with the passing of the cars. In such streets, the owner, driver or other person having charge of any vehicle delivering or loading coal, coke or other fuel or merchandise may delay street cars five minutes and no longer.

Penalty.

SEC. 6. Every person, company or corporation who shall violate any of the provisions of this resolution shall pay for each and every violation a fine of not exceeding twenty dollars.

Adopted July 3, 1906.

A RESOLUTION to prevent excessive, unnecessary and avoidable noise by street railway cars and motors.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, Delaware:

Noisy cars or motors a nuisance.

SECTION 1. That the causing, permitting or continuing of any excessive, unnecessary and avoidable noise in the operation of any street railway car or motor, operated or moved in or upon any street, alley, lane, public place or private right of

way within the limits of the City of Wilmington, shall be deemed and hereby declared a public nuisance.

Cars, motors and tracks to be in good repair.

SEC. 2. That owners, managers and operators of street railway cars within the limits of the City of Wilmington shall keep all cars, motors and tracks operated by them in such condition of structure, mechanism and repair that no excessive, unnecessary and unavoidable noise shall be caused when such motors or cars are operated or moved on any street, alley, lane, public place or private right-of-way in said city.

Street Commissioner upon complaint to notify manager of nuisance.

SEC. 3. When a complaint is made to the Street Commissioner (*a*) of the City of Wilmington of excessive, unnecessary and avoidable noise made by a motor or car or cars or motors operated on any line or portion of any line of street railway within the limits of the City of Wilmington, and the said Street Commissioner shall find that any of the provisions of Section 2 of this resolution are being violated, he shall at once serve an order in writing upon the manager of said line to abate and prevent the continuance of the noise complained of within not more than two days from the date of said order where the noise is due to flat wheels or imperfect machinery or car equipment and within not more than five days from date of said order where the noise is due to imperfect trackage or roadbed.

Abate within certain time.

(*a*) This section should be amended, so that *anyone* may, as in all cases, swear out a warrant against any railway company violating the provisions of the resolution.

SEC. 4. Any person, violating any of the provisions of this resolution, and who shall fail or refuse to comply with the order of the Street Commissioner relating thereto, as herein before provided, shall, upon conviction thereof, be fined, not to exceed fifty dollars ($50.00) for each offense, and the operating of each car or motor causing such excessive, unnecessary and avoidable noise, for each day or part of a day after the expiration of the written notice by the Street Commissioner, hereinbefore provided for, shall constitute a separate offense thereunder.

Penalty.

SEC. 5. This resolution shall take effect and be in force from and after the date of its passage.

Adopted July 10, 1906.

A RESOLUTION relating to unused railway grants.

WHEREAS, It appearing that certain street railway franchises or permission to lay tracks upon and use certain streets of this city were granted some years ago by the Street and Sewer Department without limit as to the beginning or completion and operation of such railways, and

WHEREAS, Some such grants not having been used, it would seem contrary to good public policy to longer continue them in force, therefore

Resolved, That all franchises for new roads or extensions of old ones, heretofore granted by this Department to street railway companies in this city without limit and not used, be and the same are hereby recalled and annulled. (*a*)

Franchises not in use rescinded and annulled.

(*a*) The law as to when the grant of a franchise, *ipso facto,* ceases to exist, because of a non-exercise of it, or a failure to comply with the terms within the time fixed by law, and when affirmative action has to be taken, is laid down by Nicholson, Ch., in the cases of

Wil. C. Ry. Co. vs. Wil. & B. S. Ry. Co., 8 Del. Ch. 468 at 506-7. (yr. 1900); and

Williamson vs. Gordon Heights Ry., 8 Del. Ch. 192 at 204. (r. 1898)

Adopted February 23, 1905.

RESOLUTION annulling and avoiding all unlimited consents to railways to use the streets of the city for laying tracks.

WHEREAS, This Board having heretofore annulled and avoided all unlimited permits, consents, franchises and authority heretofore granted to railways to use the streets of the city for laying their tracks, and

WHEREAS, The Wilmington City Railway Company desired a hearing before this Board whereby to secure a revocation of said action, and an opportunity for such hearing has been granted.

Unused franchises withdrawn.

Now, therefore, resolved, That the action heretofore recited be and the same is hereby ratified, readopted, approved and confirmed and that all the unused permits, consents, franchises and authorities heretofore given or granted to any railway company as an unlimited permit to occupy or use any street, lane, alley, avenue or public way in this city, which has not heretofore been utilized or of which such company has not availed itself be and the same are hereby withdrawn, rescinded, revoked, annulled and made void, with the same effect as if the same had never been passed, granted or given. (*a*)

(*a*) See note "a," page 1031 of this volume.

Adopted April 4, 1905.

A RESOLUTION requiring railway companies to lay tracks on streets for which franchise rights are held.

WHEREAS, The Board of Directors of the Street and Sewer Department did grant to the several railway companies hereinafter mentioned, by good and sufficient resolutions adopted, franchise privileges to lay tracks and operate street railways on, through and along certain streets, said railways to be constructed and operated upon notice from the Directors of the Street and Sewer Department to said railway companies so to do, and

WHEREAS, It is now demanded by, and deemed to be for the best interests of our municipality, and its citizens that such railway franchise privileges be carried out to the fulfillment of the object of increasing street railway transportation, therefore be it

Wilmington City Railway Co. and Front and Union Street Railway Co. directed to construct and operate certain railway lines.

Resolved, By the Board of Directors of the Street and Sewer Department of Wilmington, Delaware, that the "Wilmington City Railway Company" and the "Front and Union Street Railway Company" be and they are hereby severally directed to construct and operate, as per terms of divers resolutions, railway lines on Washington street between Delaware avenue and Elliott (now Concord) avenue, DuPont street between Fourth street and Delaware avenue, and also from Lan-

easter avenue (formerly Front street) northerly along Du-Pont street to Fourth street, and also northerly along Walnut street from Front street to Fifth street, thence along Fifth street to Church street, and thence northerly along Church street to Eighth street, and also along Vandever avenue from Claymont street to Market street, within six months from and after the expiration of two days from and after the date of the adoption of this resolution.

Adopted September 25, 1900.

A RESOLUTION regulating the leasing of the wharf property at foot of Church and Front streets on the Christiana river.

Section 1. The wharf property at the foot of Church and Front streets on the Christiana river shall be exempt from the provisions of an ordinance, entitled "An ordinance regulating the leasing of all wharf property in the City of Wilmington," passed February 9th, A. D. 1871, by the Council of Wilmington.

Certain wharf exempt from provisions of a certain ordinance.

Sec. 2. All ordinances or resolutions inconsistent herewith be and the same are hereby repealed.

Adopted March 31, 1893.

RESOLUTION dividing the city into districts.

Whereas, Owing to the extended boundaries of our city, it is deemed to be in the interest of increased efficiency, in the matter of the care of our public streets, that the city be divided into districts, therefore

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, Delaware:

Section 1. That from and after the first day of the month of May, A. D. 1899, the City of Wilmington shall be sub-divided into four districts, each one in charge of Supervisor, under the direction of the Street Commissioner.

City divided into four districts each in charge of a Supervisor.

Sec. 2. All that section of the city being and lying south of and including Eighth street and east of and including Washington street, shall be known as the First district.

Boundaries of First District.

Boundaries of Second District.

SEC. 3. All that section of the city being and lying north of Eighth street and east of and including Washington street shall be known as the Second district.

Boundaries of Third District.

SEC. 4. All that section of the city being and lying south of Eighth street and west of Washington street shall be known as the Third district.

Boundaries of Fourth District.

SEC. 5. All that section of the city being and lying north of and including Eighth street and west of Washington street shall be known as the Fourth district.

Duties of Supervisors.

SEC. 6. Supervisors appointed for the districts herein mentioned shall daily patrol their respective sections and see that the streets and gutters are kept clean and in good condition and repair, and to perform such other duties properly brought to notice. They will be furnished with a list of permits issued by the Department for the opening and use of streets, and shall enforce the regulations concerning such. Supervisors shall make daily reports to the Directors, through the Street Commissioner, of all work performed, its character and location and such other information pertinent.

Daily reports.

Investigate accidents.

SEC. 7. In the event of an accident happening, the Supervisor of such district must make thorough investigation and report through the Street Commissioner all particulars concerning same, together with names and addresses of witnesses thereto.

Adopted April 25, 1899.

Bookkeeper to be Assistant Secretary.

Office of bookkeeper and assistant secretary combined.

Be it resolved, by the Board of Directors of the Street and Sewer Department, that the offices of bookkeeper and assistant to the Secretary of the Department shall be immediately combined and the present bookkeeper shall perform the duties of such combined offices and shall be known as the "Assistant Secretary."

All resolutions or parts of same inconsistent herewith shall be and the same are hereby superseded.

Adopted May 1, 1900.

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[1]*A RESOLUTION in relation to the engineers employed by the Street and Sewer Department of Wilmington.*

That it shall employ an engineer who shall have charge of all sewer work in said city, and shall be known as Engineer in Charge of Sewers. It shall also employ one or more engineers who shall assist the Engineer in Charge of Sewers in carrying out all orders of said board. Engineers in Charge of Sewers.

The term of office of said engineers shall commence on the first day of February, 1892, and continue until they are discharged by said board upon proof of incompetency or neglect of duties either in field or office, or for other sufficient reasons. Term of office.

The salary of the Engineer in Charge of Sewers shall be [eighteen] hundred dollars per year, payable monthly; the salary of the Second Engineer in Charge of Sewers shall be one thousand and eighty dollars per year, payable monthly. Amendment by resolution of March 31, 1893. Salary.

Each engineer shall act in conjunction with the Chief Engineer of the city in the care and maintenance of all instruments, maps, plans, drawings, records and books relating to the surveys, regulations and grades of all culverts and sewers of the city; and before entering upon the duties of his office, he shall make oath or affirmation before the City Judge or the Mayor that he will faithfully discharge the duties of his office, as the same are or may hereafter be lawfully defined. Duties of engineers. Oath.

And each said engineer shall, before entering upon said office, execute a bond with two securities to be approved by the Board of Directors aforesaid in the sum of two thousand dollars, conditioned for the payment of any damages which may Bond.

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1. By ordinance of February 10, 1910, the engineering force was increased and the salaries readjusted. This ordinance is not included here because this volume is compiled to Dec. 31, 1909.

be sustained or incurred for, or in consequence of any mistake or error made by him in giving the line or lines, grade or grades, which he may survey by virtue of his office; *provided,* that the same shall not be recoverable unless prosecuted during his term of office, or within one year after the expiration thereof.

That the resolution of this board passed March 7th, 1890, and all other ordinances or resolutions, or parts of ordinances or resolutions inconsistent herewith be and the same are hereby repealed and made null and void.

Adopted February 16, 1892.

A RESOLUTION to create a Plumbing Inspector for the City of Wilmington and to provide rules and regulations relative to plumbing and drain laying, in accordance with an Act of the Legislature.

Be it resolved, by the Board of Directors of the Street and Sewer Department:

To appoint a Plumbing Inspector.

SECTION 1. That the said Board shall appoint some suitable person to fill the office of Plumbing Inspector for the City of Wilmington, who shall possess all the qualifications hereinafter provided and whose duty it shall be to see that all the rules ([a]) and regulations by this resolution prescribed, are properly carried into effect. The present incumbent is hereby continued under provisions of the succeeding paragraph.

Present incumbent.

([a]) As to the legal meaning of the word "rules," see the case of Morris et al vs. Pilot Coms., 7 Del. Ch. p. 136. (yr. 1894) See 76 "a" of the Charter.

Term of office.

The Plumbing Inspector hereby appointed shall hold office until the position shall be declared vacant by the Board of Directors of the Street and Sewer Department, and a notice of such action to the incumbent shall be sufficient to terminate his service.

Who eligible for Plumbing Inspector.

SEC. 2. No person shall be eligible for the office of Plumbing Inspector, unless he has had five years practical experience as a journeyman plumber, and has been a resident citizen

of the City of Wilmington for an unbroken period of five years preceding his appointment as Plumbing Inspector. The Plumbing Inspector, before entering on his duties, shall make oath (*a*) or affirmation before the Mayor of the City of Wilmington that he will faithfully enforce the rules and regulations governing plumbing and drain laying. He shall also give bond to the Mayor and Council of Wilmington, in good free- Bond.
hold security, in the sum of two thousand dollars ($2,000) for the faithful performance of his duties as prescribed by this resolution. He shall receive for his services a salary of fifteen Salary.
hundred dollars ($1,500) per annum, payable monthly. He shall be charged with the inspection of all plumbing in all buildings, and the ventilation of all water closets, cesspools, soil pipes, drain, waste and ventilating pipes from all sanitary fixtures that may be placed in house or houses, building or buildings, of any description, that may be erected, altered or changed, in the City of Wilmington, after the passage of this resolution. He shall make two inspections, or more if neces- Duties.
sary, of all plumbing work in new buildings, and of all alterations or additions to the plumbing in old buildings. The first inspection shall include all soil, waste, drain and vent pipes, and the second inspection shall include all soil, waste, drain and vent pipes, all fixtures and their connections to soil, waste, drain and vent pipes. He shall, as far as may be necesasry for the performance of his duties, and for the maintenance of the health of the citizens of Wilmington, have the right to en- Right to enter buildings.
ter any building or premises in the city limits. He shall have the right to order the removal of any plumbing fixtures, soil, drain or waste pipes that are in an unsanitary condition. Any Fines for interference.
person who shall interfere with him in the performance of such duties shall be liable to a fine of not less than $10 nor more than $20, for each offense. The Plumbing Inspector Not engage in plumbing business.
shall not engage in the occupation of plumbing directly or indirectly while holding office.

(*a*) The above oath is not sufficient.
"Every officer of the city, before he enters upon the duties of his office," must take the oath prescribed in Sec. 5 of the Charter.

SEC. 3. Every person, firm or corporation desiring to en- Who may apply for master plumber's license.
gage in the business of plumbing in the City of Wilmington as

a master or employing plumber, in connection with the public or private sewers, gutters or water courses of the City of Wilmington, shall file in the office of the Street and Sewer Department an application in writing, giving his name, residence, place of business and number of years he has worked at plumbing, in case of an application of an individual. In case of a firm the application shall state the name, residence of each person constituting said firm, place of business of said firm, and number of years each member of said firm has worked at plumbing. In the case of a corporation the application shall state place of business, name of corporation, name and residence of president, name and residence of the member or members of the corporation who are practical plumbers, and state number of years he or they have worked at plumbing. Each applicant shall ask for a license as a master plumber. If the Board of Directors of the Street and Sewer Department shall be satisfied of the applicant's skill and responsibility to carry on the business as applied for in accordance with the rules and regulations of said board, they may grant such licenses. And for every such license to carry on the business of master plumber the applicant shall pay to the Board of Directors for the use of the city the sum of $5.

Application to be filed in writing.

Board of Directors may grant license.

License fee.

No license shall be granted to carry on the business of master or employing plumber to any individual nor to any firm or corporation unless they can show to the satisfaction of the Board of Directors of the Street and Sewer Department, that they are competent to fulfill all the requirements necessary to do plumbing work in a sanitary manner. No licenses shall be granted for more than one year, and all licenses shall expire on the 31st day of December of each year.

Only competent persons can be licensed.

License expire Dec. 31.

SEC. 4. No person other than a licensed plumber shall be allowed to carry on or engage in the business of plumbing in the City of Wilmington, or make any connection with any sewer, drain, soil, waste pipe or water course, or any pipe or fixture connected with the plumbing of any house, houses, building or buildings in the City of Wilmington. *Provided,* that nothing in this resolution shall prevent any firm or corporation regularly employing journeymen plumbers from do-

Only licensed persons can engage in business.

ing any work of this kind on and within the building line of the premises in which they are permanently conducting their business, if they have first deposited with the Secretary of the Street and Sewer Department an approved bond in the sum of one thousand dollars ($1,000); conditioned the same as required for master plumbers.

Persons not licensed can do work on their own premises if bond is deposited.

Amended by resolution of of Street and Sewer Department, Dec. 26, 1905.

Deposit with Board of Directors $25.

Amended by resolution of of Street and Sewer Department, Jan. 22, 1907.

Bond of $1,000 to indemnify city.

Restore streets to former condition.

SEC. 5. [Upon receiving a license as master plumber, the person, firm or corporation to whom the same is issued shall deposit the sum of twenty-five dollars with the Board of Directors of the Street and Sewer Department for the uses and purposes hereinafter specified, and shall execute and deliver to the Secretary of said Board, a good and satisfactory surety bond executed by the person, firm or corporation in whose name the license is to be issued and a surety company to be approved by said Board, in the sum of one thousand dollars, conditioned that such person, firm or corporation and his or their surety or sureties shall indemnify and save harmless (*a*) "The Mayor and Council of Wilmington" of and from all damage or loss incurred by the said "The Mayor and Council of Wilmington," growing out of or in any way connected with the negligence of such person, firm or corporation, incident to the prosecution of work done under and by virtue of the authority contained in said license, and also for any cost or expense incurred by the said "The Mayor and Council of Wilmington" in repairing, replacing or restoring any streets or pavements over any opening or excavation made by such licensee, to a safe and workmanlike condition; and a further condition to keep and maintain such street or pavement at the place where such work shall have been done in a safe and passable condition for the period of one year next thereafter the completion of such work.][1]

(*a*) The city should take care that its bonds of indemnity be good, for it is liable in damages to one injured by the negligent acts of plumbers. For the time they are doing work in the streets, they are practically the *agents* of the city, and the city cannot shirk or shift its responsibility.

Comegys, C. J.: "Under the authority of its charter, and the ordinances passed in pursuance of legislative power,

1. See provisions of a Resolution relative to opening of beds of streets, adopted July 9, 1889, on p. 1004 of this volume.

it oftentimes authorizes by *license, parties not in its employ,* to do certain things; as for example * * to open the public streets and sidewalks with trenches, to connect house-drains, water or gas pipes with the public mains in the street, taking from them, or having the power to take, indemnity to protect the city from suits or liabilities of any kind growing out of the grant of such privilege,'' &c. (526)

As to its duty to keep the streets in a reasonably safe condition, and that it cannot transfer this responsibility, the Court said:

''It is as obligatory upon it as the payment of taxes upon an individual, and can neither be assigned nor transferred to individual parties, so as to relieve itself from such incident to its existence.''

Anderson & Son vs. Mayor and Council of Wil., 8 Houst. 516 at 527. (yr. 1889)

Register.

All persons, firms or corporations receiving a license as master plumber, shall register with the Plumbing Inspector the location of their actual place of business, the name under which such business is conducted, and shall immediately notify the said Plumbing Inspector of any changes in either. They shall display in a conspicuous manner in front of their place of business, a sign bearing the words ''Licensed Plumber'' in letters not less than three inches square.

Board may use deposit for repairs.

The Board of Directors of the Street and Sewer Department shall have authority to use any part, or the whole of the sum of twenty-five dollars deposited as hereinbefore provided, in making good any defective work in connection with opening streets or connecting with sewers, and any licensee under this Act shall on notice replace the amount so expended so as to keep the deposit up to the full sum of twenty-five dollars.

When to return deposit.

At the expiration of said period of one year, such portion of said deposit as shall not have been expended as hereinbefore provided shall be returned by the said Board of Directors to the person, firm or corporation by whom the same was deposited.]

Furnish the Plumbing Inspector with statement and plans before commencing work.

SEC. 6. Before any portion of the plumbing and draining system of any building shall be constructed or reconstructed, there shall be furnished to the Plumbing Inspector a description or statement of the proposed work, together with a detailed drawing showing the run of soil, drain, waste and ventilating pipes, signed by the plumber, giving the number and kind of fixtures to be used in said work, the size and quality of soil, drain, waste and ventilating pipes to be used, and such

other information as will give the Inspector a complete knowledge of the work to be done. The said statement and plan to be made in duplicate upon blanks to be provided by the Plumbing Inspector, and when approved by said Inspector such approval shall be endorsed on one copy of the statement and plan by the said Inspector and returned to the plumber as his authority for executing the work; the other copy to be retained by the Plumbing Inspector. The work must be executed strictly in accordance with the approved statement and plan. Any alterations must receive the approval of the said Inspector. This regulation also applies to any extension or alterations of old work but does not apply to such work as can be properly classed under the head of repairs. The Plumbing Inspector shall not approve any statement or plan of any plumbing work requiring connections to be made with a public or private sewer (*a*) until an application to connect with said public or private sewer has been filed with the Directors of the Street and Sewer Department; said application must be signed by a licensed master plumber, and made to comply with Section 27 of this resolution.

Approved statement is authority.

Alterations must be approved.

Regulations apply to old work but not repairs.

Plans for sewer work not to be approved until permit for sewer connection is secured.

(*a*) See Sec. 32 "a" of this Act.

SEC. 7. The Plumbing Inspector shall be notified promptly by the plumber when the plumbing and drainage work of building or any portion thereof is completed and ready for inspection and testing. All inspections and testings shall be made by the Inspector within twenty working hours from such notification. Any such systems put in and covered without due notice to the Plumbing Inspector must be uncovered for examination at the direction of said Inspector. If the Plumbing Inspector should fail to make the inspection within twenty working hours the uncovering shall be done by the Inspector himself.

Give notice of work ready for inspection.

Inspect within 20 hours.

Uncover work for inspection.

SEC. 8. When the water closets of a building are to be connected to a sewer, cesspool or vault, they must be connected with soil pipes not less than four inches in diameter for vertical pipes, or five inches in diameter for horizontal pipes; the latter to have a fall of not less than $\frac{1}{4}$ of an inch to the foot.

Regulations for water closets.

Grades of pipes.

In solid ground use T. C. pipe.

Kind of T. C. pipe.

T. C. pipe not to be used within 5 ft. of foundation walls.

Separate connections with sewers for every building.

All horizontal drains within and to a distance of five feet beyond the walls of buildings shall be of cast or wrought iron, and shall be so located as to be readily accessible for inspection. Outside of buildings where the soil is of sufficient solidity for a proper foundation cylindrical terra cotta pipes of the best quality free from flaws, splints or cracks, perfectly burned and well salt glazed over the entire inner and outer surface, may be used, laid as required, but in no case shall terra cotta pipes be permitted within five (5) feet of any foundation wall or for extension to connect with rain water conductors, surface or air inlets—and each and every building shall be connected separately to a sewer, cesspool or water course.

Soil pipe above roof 12 feet from windows or openings.

Should there be no water closet within the building, the soil pipe leading from closet in yard shall extend above the roof of the building and at a point to be designated by the Plumbing Inspector, but in no case shall the vent pipe terminate within twelve feet of any window or other opening of this or the adjoining building or buildings.

Sizes of C. I. pipe under and above ground.

Extra heavy C. I. pipe and weight of same.

SEC. 9. All cast or wrought iron pipes must be sound, free from holes, and when laid under ground shall have a uniform thickness of not less than $\frac{1}{4}$ of an inch; when placed above ground said pipes shall have a uniform thickness of not less than $\frac{1}{8}$ of an inch. Where the building is over sixty feet high above the curb, pipes of the following weights shall be used with extra heavy fittings: Two inch, five and one-half pounds per lineal foot; three inch, nine and one-half pounds per lineal foot; four inch, thirteen pounds per lineal foot; five inch, seventeen pounds per lineal foot; six inch, twenty pounds per lineal foot; seven inch, twenty-seven pounds per lineal foot; eight inch, thirty-three and one-half pounds per lineal foot; ten inch, forty-five pounds per lineal foot; twelve inch, fifty-four pounds per lineal foot.

All pipes to be direct, accessible and protected from frost.

How placed in partitions, &c.

SEC. 10. All drain, soil, waste, vent and supply pipes shall be as direct and concentrated as possible, protected from frost and readily accessible for inspection and convenience in repairing. When necessarily placed within partitions or in re-

cesses in walls, soil and waste pipes must never be covered except with woodwork, said woodwork to be so fastened with screws (never nails) as to be readily removed. Use screws

Soil, waste and vent pipes to be iron or lead.

SEC. 11. Every vertical soil pipe, waste pipe and vent pipe must be of cast or galvanized wrought iron or lead, and it must extend full size at least two feet above the roof, except in the case of flat roof tenement houses, in which case it shall extend at least six feet above the roof, and in all cases such pipes shall terminate at a point which shall be approved by the Plumbing Inspector. Each length shall be securely fastened, and in case of each line of soil pipe it shall rest at its foot on a pier or foundation to prevent settling. All joints in case of cast iron drain, soil or waste pipes must be so filled with oakum and lead, and hand caulked as to make them gas tight, and the amount of lead used shall not be less than twelve ounces to each inch diameter of the pipe so connected. All wrought iron pipe shall have gas tight screwed joints. All soil pipe shall be at least four inches in diameter.

Where terminate.

How fastened.

Joints to be filled and hand caulked.

Soil pipe to be 4 inches.

No traps.

SEC. 12. There shall be no traps placed on vertical soil and waste pipes. All changes in direction in cast or wrought iron pipes shall be made with curved pipes, and all connections with Y branches shall be made with sixth or eighth bends, if possible.

Y's and bends.

Vent pipes.

SEC. 13. Soil, waste and vent pipes in an extension must be extended above the roof of the main building, when otherwise they would open within twelve feet of the windows of the main house or the adjoining house.

D lead pipe.

SEC. 14. Where lead pipe is used to connect fixtures with soil or waste pipes, or to connect traps with vent pipes, it shall not be lighter than D pipe.

Water closet connections, how made.

Connection to soil pipes for water closets, including hopper closets shall be made with eight pound lead bends and brass floor plates, which shall be soldered to said bend. The joint between the plates and the water closets shall be made

with a rubber ring which shall be bolted to the closet and floor plate.

Connections with lead and iron.

SEC. 15. All connection of lead with iron pipes must be made with a brass sleeve or ferrule of the same size as the lead pipe, put in the hub of the branch of the iron pipe caulked with lead. The lead pipe must be attached to the ferrule by a wiped joint.

Separate traps.

SEC. 16. Every water closet, urinal, sink, basin, wash-tray, bath and every tub or set of tubs and hydrant waste pipe must be separately and effectively trapped; urinal platforms if connected to drain pipes must also be properly trapped and a supply of water so arranged as to always maintain the seal of said traps. In no case shall the waste from a bath tub or other fixture be connected with a water closet trap.

Traps, how connected and vented.

SEC. 17. Traps must be placed as near the fixtures as practicable, and in no case shall a trap be more than two feet from fixture. Each and every trap shall be protected from syphonage and be ventilated by an air pipe taken out of the crown of the trap and branched into the soil pipe above the highest fixture, or connected with a special pipe erected for ventilating purposes only, said ventilating pipe to extend at least two feet above the roof in which case the area of the special vent must be increased as it passes upwards so as to correspond to the combined area of all branch vents passing into it, or by some approved automatic vent. Approved mechanical traps may be substituted where it is necessary or advisable, but only on special permit from the Plumbing Inspector.

Overflow pipes.

SEC. 18. Overflow pipes from fixtures in each case must be connected on the inlet side of the trap or the same fixture.

Refrigerator, Waste pipes, etc.

SEC. 19. No safe under any fixtures shall be provided with any drip, waste or notice-pipe connected with any soil or waste pipe. The waste pipe from refrigerators shall in no case be directly connected with any soil or waste pipe, or with any drain or sewer.

Location of water closets.

Kind prohibited.

SEC. 20. Water closets must never be in an unventilated room or compartment if it can be avoided. In every case the compartment must be open to the outer air, or be ventilated by means of a shaft or air-duct. Pan closets, hoppers and hollow plunger closets are prohibited.

Water closets in yard.

SEC. 21. Water closets when placed in the yard must be so arranged as to be conveniently and adequately flushed, and their water supply pipes and traps must be protected from freezing. The compartments of such water closets must be ventilated.

All traps and valves must be placed in a pit, constructed of brick, stone or cement, at least three feet deep, below surface of ground.

Amendment, Nov. 12, 1909.

[The walls of said pit to be at least eight inches thick, and hopper valves must be placed on iron valve rests and waste connected above traps.]

Amended by resolution of Street and Sewer Department, July 9, 1907.

[Anti-freezing hoppers with valve constructions requiring no pit, approved by the Board of Directors of the Street and Sewer Department, may be used.]

Amendment, Nov. 12, 1909.

[Houses over all outside closets shall be at least thirty inches square to properly protect, accommodate and facilitate their use, and built on proper stone, brick or concrete foundations satisfactory to the Plumbing Inspector.]

Rain conductors.

SEC. 22. Rain water leaders must not be used as soil, waste or vent pipes, nor shall any soil, waste or vent pipe be used as a leader.

Steam prohibited in drains.

SEC. 23. No steam, exhaust, blow-off or drip pipe from a steam boiler shall connect with the sewer or with any drain, soil pipe or waste pipe. Such pipes must discharge into a tank or condenser from which a suitable outlet to the drain may be provided.

SEC. 24. Every plumbing system which includes water closets, soil, waste, drain and vent pipes leading to and con-

necting with a public or private sewer, cesspool, vault or water course, including those altered or extended, shall be given two inspections by and at the expense of the master plumber, in the presence of the Plumbing Inspector. The first test, which shall be the air test, to be made when all soil, waste, drain and vent pipes are placed in position, and all pipes, joints and cleanout openings, must stand an air pressure of five pounds per square inch. All pipes, joints and cleanout openings found defective must be removed and replaced with sound material and another test made in the presence of said inspector. The second inspection shall be made in the presence of said Inspector, when all fixtures are set, and connected to soil, waste, drain and vent pipes. If the second inspection shows the work to have been properly executed, the Plumbing Inspector shall issue to the master plumber a certificate stating that such work has been executed in accordance with the rules and regulations of the Street and Sewer Department governing plumbing and drainage. No work shall be considered as finished, nor shall the plumber's responsibility be released, until he shall have received his certificate from the Plumbing Inspector.

Inspections and tests.

Removal of imperfect work.

SEC. 25. All work improperly executed and not in accordance with the provisions of the resolution, shall, upon the written order of the Plumbing Inspector, properly served, be removed by the person, firm or corporation improperly executing the same, or by the person, firm or corporation for whom such improper work was executed, within forty-eight hours, and for any failure to remove such work after being so notified such persons, firm or corporation shall forfeit and pay a fine of twenty-five dollars for each and every twenty-four hours that such work so improperly executed shall be suffered to remain.

Penalties.

Amended by resolution of the Street and Sewer Department, Aug. 20, 1909.

SEC. 26. [No person or persons, firm or corporation shall make any opening or excavation in the bed, roadway or sidewalk of any street, avenue, highway, lane, alley or other public place in the City of Wilmington, Delaware, for any purpose whatever, except master plumbers licensed by the Board of Directors of the Street and Sewer Department as hereinbe-

fore provided and in accordance with provisions hereinafter provided.

When public service corporations may open streets.

Public service corporations having franchises for the use of the streets, avenues, highways, lanes and alleys may open and excavate same to do work contemplated in said franchises, upon application to the Street and Sewer Department of the City of Wilmington for permits for such purposes, in accordance with terms, charges and regulations provided therefor.

Excavations, when made by Street and Sewer Department.

All excavations or openings necessary to be made in the bed or roadway between the curb lines of any street, avenue, highway, lane, alley or other public place for the purpose of laying, repairing, renewing, altering or cleaning drains, steam pipes, or for any purpose in connection with the public or private sewers, gutters, water courses, steam pipes, conduits or other thing located in the public streets will be made by the Street and Sewer Department in accordance with the terms hereinafter mentioned, except all work in connection with water pipes, which the Board of Water Commissioners have provided for.

Permits, when granted by Street and Sewer Department.

Permits (*a*) will be issued to master plumbers, licensed as provided in this resolution, to open and excavate the sidewalks or footways of the streets, avenues, highways, lanes, alleys or other public places for the purpose of laying, repairing, renewing, altering or cleaning drains, water pipes, steam pipes or for any purpose in connection with the public or private sewers, gutters, water courses, water pipes, steam pipes, conduits or other thing located in the public streets, *provided*, application is made to the Street and Sewer Department therefor.

(*a*) See Sec. 32 "a" of this Act.

Application to open streets to be made on blank to Street and Sewer Department.

When it is necessary for the bed or roadway of any street, avenue, highway, lane, alley or other public place between the curb lines to be opened or excavated for any of the purposes heretofore mentioned or for any purpose, application shall be made to the Street and Sewer Department on blanks provided for such purposes by said Department.

Applicant to open streets to state the purposes therefor in full.

The applicant must truly state all the purposes for which the opening or excavation is required, the street and number of the property requiring the work, which side of the street with the distance and direction from the nearest street intersection, the number of openings required, and all other particulars for a full understanding of the subject, and designate the time when excavation or opening is to be made, and must be signed by the party or parties desiring such work to be done, or their authorized agents. Upon the filing of such application with the Street and Sewer Department, if all the requirements of the laws and regulations of the city have been complied with the charges for such work fixed by the Street and Sewer Department must be paid before work will be performed by the Street and Sewer Department.

Work will be stopped if application does not state all facts fully.

In any case where the application has not truly stated the correct measurements of the surface to be opened or excavated or the true purposes for which the excavation was required, the work shall not proceed beyond the curb line until such excess expense, if any, has been paid for by the applicant, such excess to be calculated at the aforementioned rates. No permits will be issued to any master plumber to open or excavate the sidewalks until all charges for work performed by the Street and Sewer Department have been paid.

When permits refused.

If Street and Sewer Department does work it must be paid therefor.

In cases of repairs, renewals, alterations or cleaning of drains or other pipes or conduits, the labor and materials directly concerned with such repairs, alterations or cleaning may be performed and furnished by and at the expense of the master plumber, or if performed and furnished by the Street and Sewer Department, the actual cost thereof shall be charged in addition to the charges hereinbefore mentioned, and shall be paid by said master plumber before any further permits shall be issued to said master plumber.]

Amended by resolution of Street and Sewer Directors, Aug. 20, 1909.

Application for sewer permits.

SEC. 27. No permit (*a*) will be granted [for connecting any property with any sewers] unless application be made therefore in writing upon printed blanks furnished by the Department, by the owner of the property to be drained or by his duly authorized attorney, and by a licensed master

plumber to do the work. The application must state that the owner or agent as aforesaid will be subject to all the rules (*b*) and regulations and penalties prescribed by the Board of Directors of the Street and Sewer Department; also state the full name of owner, the size and kind of drain pipe to be used, the street and number of building (if numbered), give a clear description of the premises, which side of the street, with the distance and direction from the nearest street intersection, the size and dimension of the lot to be drained, and must fully and truly state all the purposes for which the drain is to be used, and all other particulars for a full understanding of the subject, and designate the time when connection is to be made. The owner or attorney, as above, must also execute a release of the Mayor and Council of Wilmington, or their duly authorized officers, from all liability or damages which may in any manner result to the premises by reason of such connection. No permit shall be deemed to authorize anything not stated in the application, and for any misrepresentations in such application, the drain-layer may be fined or suspended, and if it appears to be wilful, his license will be revoked.

Permits and under what conditions granted.

Misrepresentations.

(*a*) See Sec. 32 "a" of this Act.

(*b*) See Sec. 1 "a" of this Act.

[No permit for opening or excavating sidewalks or footways will be granted for connecting property with any sewer until all liens or charges provided by law have been paid.]

[In cases where the Board of Health of the City of Wilmington has ordered properties to be connected with sewers, thirty (30) days from the date of issue of permits for such work will be allowed the master plumber to fully complete the work required by said Board of Health, and no permits will be issued to the master plumber after the expiration of the said thirty (30) days, unless said work has been fully completed to the satisfaction of the Board of Health, or unless the Directors of the Street and Sewer Department shall find cause to extend the time on account of weather conditions which prevent the completion of the work within the time allowed in the permits.]

Amended by resolution of Street and Sewer Department, March 5, 1907.

Amended by resolution of Street and Sewer Department, Aug. 20, 1909.

SEC. 28. [In connecting a private sewer or drain with a public or another private sewer, the branches which shall have been laid to the curb line must be used for such connection.]

Size and kind of pipe.

SEC. 29. In all cases the drain or sewer pipes herein alluded to, extending from the main sewer in the street to a point five feet outside of the building, or if not taken into the building, then to any other place which it is intended to drain must consist of iron or good salt glazed terra cotta pipe subject to approval, and shall be six (6) inches in diameter, except by consent of the Street and Sewer Department.

No partnership drains.

SEC. 30. When it is possible, every house or property must be separately and independently connected with the street sewer, and in no case will a partnership drain be allowed except permission be given expressly by the Street and Sewer Department and approvd by the Plumbing Inspector.

Regulations for laying drain pipes, etc.

SEC. 31. The least inclination that will be allowed for water closet, kitchen and all other drains, of not over six inches in diameter liable to receive solid substances is one-quarter of an inch in one foot; and for cellar and other drains to receive water only, one-eighth of an inch in one foot; pipes to be laid in a trench carefully, with the bottom trimmed to a perfect and unbroken grade and in a straight line from main sewer to house line, and having depressions for joints of pipe so that each length of pipe shall be evenly supported throughout the entire drain, joints to be made by filling the space between spigot and bell ends with hydraulic mortar, which shall be applied with particular care to the bottom of the joints, mortar to consist of one part of hydraulic cement and one part of clean sharp sand. No tempered up cement to be used. The inside of each pipe joint to be thoroughly cleaned from any projecting cement. Back-filling must be solidly packed up to the top of the pipe. Changes of direction must be made with regular curves, and all connections made with Y branches and the whole must be subject to inspection by the proper officer of the Department before it is covered up.

Back-filling.

Amended by resolution of Street and Sewer Directors, Aug. 20, 1909.

SEC. 32. No excavation can be made in [the sidewalk or footways of] any street, avenue, * * * * lane, alley, or

other public place in the city, and no work of laying drains or water pipe of any kind can be commenced or continued without the permit (a) is on the ground in the hands of the master plumber, or one employed by him, and the same must be shown to any city officer if he shall so request it.

Permits for excavation must be in hand on the work.

(a) The plumber, for his own protection, should never begin to excavate a street bed until he has his permit also to connect with a sewer drain, water pipe, &c. And the city should never grant a permit to *excavate* until it has first granted a permit to connect with a sewer, water pipe, &c. In this way there will be no delay, after the trench has been dug in *waiting* for the permit to connect with a sewer drain, or water pipe, gas pipe, &c. A disregard of this rule by the city has been held to be negligence, making it liable in damages.

Comegys, C. J.: "In fact, the issuance of the license to excavate *before* permission was obtained by the license to *connect* with the *private sewer* in the street, as shown by the plaintiff's proof, was an act of negligence on the part of the defendant's agents; and, it having been testified to that the work of attachment to the private sewer was *suspended* on the afternoon before the flood came, to receive said permit, and could have been finished, if it had been received," before the street bed was excavated, and thereby averted the flooding of the cellar, the city because of this negligence, was held to be liable.

Anderson & Son vs. Mayor and Council of Wil., 8 Houst. 516 at 528. (yr. 1889)

SEC. 33. If from any cause the master plumber should fail to have the connection and drain ready for inspection at the time specified in his application, then notice must be left at the proper office fixing another time for doing the work; if not ready at the time of the second notice, a charge of one dollar will be made for a third notice; the first notice must be given at least one day previous to the commencement of the work; and no person or corporation shall connect with any public or private sewer except in the presence of an authorized officer of the Street and Sewer Department.

Notices given for sewer inspection.

SEC. 34. The (sidewalk or footway) must be opened and the paving [materials] and the dirt deposited in a manner which will occasion the least inconvenience to the public, and provide for the passage of water along the gutters, and all car tracks must be kept clear so as not to interrupt the passage of the cars.[1] Every master plumber licensed by the Board must enclose any opening which he may

Amended by resolution of the Street and Sewer Department, Aug. 20, 1909.

Street openings, how made and protected.

1. See Sec. 1 of Resolution of July 3, 1906, p. 1027 of this volume.

Amended by resolution of the Street and Sewer Department, Aug. 20, 1909.

make in the [sidewalks or footways of the] public streets or alleys with sufficient barriers, and must maintain red lights[1] at the same at night, and must take all other necessary precautions to effectually guard the public against all accidents from the beginning to the end of the work, and can only make excavations and lay drains and other pipes on condition that he is to be held liable for all damages (*a*) that may result from his neglect of any necessary precautions against any accident to persons, * * * * vehicles or property of any kind whatever. If the sides of the trenches will not stand perpendicularly, sheeting and braces must be used to prevent any unnecessary caving.

Liable for damages on account of excavations.

(*a*) The city cannot transfer, assign, shift or shirk its responsibility or liability for damages to one injured through the negligent acts of plumbers or others in opening street beds by license of the city. The license, or permit, makes them, temporarily, *agents of the city.* The plumber, &c., of course, may be liable to the city.

See Anderson case above cited at p. 527.

Amendment, Aug. 20, 1909.

SEC. 35. In all cases where the [sidewalk or footway] is opened or the sidewalk pavement taken up or open trenches made for water or drain pipe, or the repairing of same, or for any other purpose whatever, the stones, bricks, sand, gravel and earth, or whatever other materials may have to be passed or penetrated, must be removed and immediately replaced in the same relation in which they were found; and all rubbish must be at once removed, leaving the street and sidewalk in perfect repair, the same to be so maintained for a period of twelve months. In refilling the opening, the earth must be deposited in layers of not more than nine inches in depth, and each layer must be thoroughly puddled or rammed to prevent aftersettling. All water and gas pipes must be protected from injury or settling to the satisfaction of the Department.

Material excavated.

How to refill openings.

Repairs to be done by the Board of Directors at expense of licensee.

SEC. 36. If any master plumber shall neglect or refuse to comply with the rules (*a*) hereinbefore specified in Rule 35, then the proper repairs or work will be done by the said Board, and the cost therefore charged to the said master plumber,

1. See ordinance passed March 24, 1882. (p. 949 of this volume.)

that is against the deposit of twenty-five dollars, which he made with the Board at the time of making application for his license (the granting of which license is his receipt for said deposit). The officer of the Board having aforesaid work done will report the same, as soon as completed, to the Secretary, and forthwith the Secretary shall make bill of same to the master plumber, showing amount expended, and balance standing on deposit, and the master plumber shall not receive any more permits until the deposit is made up to the original amount of twenty-five dollars. If the master plumber should from any cause quit business, he can, upon application to the Board, have his deposit, less any amounts which may be charged to him by the Board, refunded to him after twelve months have elapsed from the time of receiving his last permit.

No permits will be granted.

Refund deposit of $25.

(*a*) See Sec. 1 "a" of this Act.

SEC. 37. The inspector must be permitted at all times to inspect all material and work; any refusal to permit such inspection, or any interference with an inspector in the performance of his duty, will be immediately followed by a suspension or forfeiture of license.

Forfeit license.

SEC. 38. No exhaust steam from steam engines or blow-off from steam boiler, or any other steam appliance shall be connected with any public sewer or any private sewer connected with a public sewer.

Exhaust steam.

SEC. 39. No person shall uncover a public or private sewer for any purpose, or make connection therewith, or shall uncover the public inspection holes or connection branches therewith, or interfere with or disturb any street inlet, or any other appurtenance with the sewers of the city without first obtaining permission from the proper officer of the Board.

Unlawful to do anything in connection with sewers, etc.

SEC. 40. No person shall throw or deposit, or cause to be thrown or deposited in any vessel or receptacle connected with a public or private sewer any garbage, vegetable parings, ashes, cinders, rags, or the offal from any stable, slaughter house, stock yard, tannery, morocco shop, or any other build-

Offal, etc., prohibited in sewers.

ing or establishment of any kind whatever, or shall discharge or permit to be discharged into any public or private sewer anything that will injure or obstruct them.

Location of Y branches, etc., given by Engineer in Charge of Sewers.

SEC. 41. When application is made to connect any house or houses, building or buildings, with a public or private sewer as provided for in Section 26 of this resolution, such information as the department has with regard to the position of junction pieces and Y branches will be furnished to the master plumber by the Engineer in Charge of Sewers but at the risk of the master plumber as to the accuracy of the same. No information or permit will be issued to any master plumber to connect with a public or private sewer until the plan and specifications for the work have been filed with the Plumbing Inspector, as provided for in Section 6 of this resolution.

Violations of rules.

SEC. 42. No master plumber shall allow his name to be used by any other person or party, directly or indirectly, either for the purpose of obtaining permit or doing any work under his license. Nor shall he sublet any part of his work to any other master plumber without first obtaining a special permit so to do from the Plumbing Inspector.

Sublet work.

Cesspool connections prohibited.

SEC. 43. It shall not be lawful for any plumber or other person, to connect any privy well or cesspool, with any public or private sewer connecting with a public sewer, except by a special permit by the Board of Directors of the Street and Sewer Department.

Penalty for violation of rules by licensee.

SEC. 44. Any master plumber who shall be guilty of a violation of any of the rules adopted by the Board of Directors of the Street and Sewer Department will be immediately deprived of his license or be subjected to a fine of twenty-five ($25) dollars or both, at the discretion of the Board.

Penalty for violation of rules by any person.

SEC. 45. Any person offending against any of the provisions of these rules and regulations or any rules and regulations which may hereafter be adopted by the Board of Directors of the Street and Sewer Department, shall forfeit and pay a penalty of not less than five nor more than fifty dollars for

every such offence, said fine to be collected as other fines are collected for offences against the ordinances of the city.

SEC. 46. Persons from other places coming to Wilmington to do plumbing may be given a special permit by the Board of Directors of Street and Sewer Department for any one particular job only, upon the furnishing to the Plumbing Inspector by the person applying for the permit satisfactory proof that they are legitimate master plumbers, regularly engaged in the business of plumbing and having a license from the proper officials of the city, town or State from which they came. [If the excavation or opening of the sidewalks or footways be necessary for the performance of the work, such excavation or opening and the work required therein shall be performed by the Street and Sewer Department at the expense of the party requiring it.] Should such persons desire a permit for more than one job, in any one year, from the date of their first permit, they shall be refused until they fully comply with all of the conditions of Section 3 of this resolution.

Special permits for non-residents.

Amendment. Aug. 20, 1909.

SEC. 47. All ordinances, rules and resolutions or parts of the same inconsistent herewith are hereby superseded and repealed.

Adopted March 26, 1901.

A RESOLUTION to throw the corner of the sidewalk into the roadway at the southeast corner of Maryland avenue and Read street.

SECTION 1. That the piece of land described as follows, which is now a portion of the sidewalk at the southeast corner of Maryland avenue and Read street, be made a portion of the roadway, viz: Beginning at a point in the curb line of the south side of Maryland avenue, at the distance of one hundred and forty-nine feet and nine inches (149 ft. 9 in.) south of the southerly side of Front street at sixty feet (60) wide, measured at right angles with said Front street; thence southerly, at right angles with said curb line, sixteen feet and five-eighths of an inch (16 ft. ⅝ in.) to the outside edge of the curb

Sidewalk made part of roadway.

Description.

as now set on the northeasterly side of said Read street; thence northwesterly along the outside edge of said curb, eleven feet nine inches and one-quarter of an inch (11 ft. 9¼ in.) to an angle in said curb; thence northerly along the outside edge of the curb and at right angles with the curb line of the south side of Maryland avenue, six feet and six inches (6 ft. 6 in.) to the curb line of the south side of Maryland avenue aforesaid; and thence easterly along said curb line of Maryland avenue six feet ten inches and five-eighths of an inch (6 ft. 10⅝ in.) to the place of beginning.

SEC. 2. That all ordinances and resolutions or parts of the same inconsistent herewith be and the same are hereby superseded.

Adopted June 7, 1888.

A RESOLUTION to fix and establish the width of the sidewalk and grade of Church lane and to throw a portion of the sidewalk at the southeast corner of Seventh street and Church lane into the roadway.

Width.

SECTION 1. That the width of the footway or sidewalk on the east side of Church lane shall be eight (8) feet.

SEC. 2. * * * * * * * * * *

Description of land made a part of roadway.

SEC. 3. That the piece of land described and bounded as follows, which is now a portion of the sidewalk at the southeast corner of Seventh street and Church lane be made a portion of the roadway, viz: Beginning at the intersection of the southerly curb line of Seventh street and the easterly curb line of Church lane; thence southerly along the easterly curb line of Church lane to the southerly building line of Seventh street; thence northerly at right angles to Seventh street twelve (12) feet to the southerly curb line of Seventh street; thence westerly along the southerly curb line of Seventh street to the place of beginning.

SEC. 4. That all ordinances and resolutions and parts of the same inconsistent herewith be and the same are hereby superseded.

Adopted September 3, 1889.

A RESOLUTION to change the name of Front street in this city.

Be it resolved, by the Street and Sewer Department of the City of Wilmington: That such portion of the street now known by the name of Front street as extends from Madison street westerly to the city line, shall from and after the passage of this resolution be styled and called Lancaster avenue.

Lancaster avenue, where situated.

Adopted July 10, 1888.

A RESOLUTION changing the name of a portion of Hazlet street to Park Place.

SECTION 1. That all that portion of Hazlet street lying and being between Jackson and Van Buren streets be and the same is hereby changed to Park Place.

SEC. 2. That all ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed.

Adopted March 30, 1892.

A RESOLUTION changing the name of "40 Foot street" to Douglas street.

Resolved, That the highway between DuPont and Scott streets from Seventh to Eighth streets, known as Forty Foot street, be hereafter known by the name of "Douglas street," and the City Engineer is hereby instructed to place the name of same, hereby designated, on the city maps and plans.

Forty foot street changed to Douglas street.

Adopted October 15, 1895.

A RESOLUTION changing the names of certain streets in the City of Wilmington, Delaware.

WHEREAS, It is a source of confusion and annoyance to have streets in different sections of the city bearing the same name and others known by several names, and

WHEREAS, The Wilmington and Great Valley Turnpike Road is best known by the name of Concord pike, an old historical name, therefore

Be it resolved, by the Board of Directors of the Street and Sewer Department of Wilmington, Delaware:

Part of Concord pike changed to Concord avenue.

That all that portion of the roadway commonly known as Concord pike or Elliott avenue, shall be and it is hereby named Concord avenue from its intersection with Market street to the city line as it now exists or may hereafter be extended.

Part of Morrow street changed to Stoeckle street.

That "Morrow" street between Adams and Jackson streets from Sixth to Fifth streets be and it is hereby changed to "Stoeckle" street.

Adopted July 19, 1898.

A RESOLUTION to change the name of a portion of Thirty-sixth street as located and established by a resolution passed by the Board of Directors of the Street and Sewer Department March 17, 1896, in the City of Wilmington, Delaware.

Be it resolved, by the Board of Directors of the Street and Sewer Department:

Part of Thirty-sixth street changed to Barrett street.

SECTION 1. That all that portion of Thirty-sixth street as located and established by a resolution passed by the Board of Directors of the Street and Sewer Department, March 17th, 1896, from the northerly side of West street as located and established by a resolution passed by the aforesaid Board of Directors of the Street and Sewer Department, July 11, 1905, to

the northwesterly boundary of the city shall hereafter be known as Barrett street.

SEC. 2. That all ordinances and resolutions or parts of the same inconsistent herewith be and the same are hereby superseded.

Adopted August 1, 1905.

A RESOLUTION changing the names of certain streets in the City of Wilmington, Delaware.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, Delaware:

SECTION 1. That "Wooddale avenue" between Eighteenth street and the city line be and it is hereby changed in name to "Van Buren street." Wooddale avenue to Van Buren street.

SEC. 2. That "Park lane" between Eighteenth street and the city line be and it is hereby changed in name to "Harrison street." Park lane to Harrison street.

SEC. 3. That "Willow lane" between Eighteenth street and the city line be and it is hereby changed in name to "Franklin street." Willow lane to Franklin street.

SEC. 4. That "Miller street" between Eighteenth street and the city line be and it is hereby changed in name to "Broome street." Miller street to Broome street.

SEC. 5. That "Wood street" between Eighteenth street and the city line be and it is hereby changed in name to "Rodney street." Wood street to Rodney street.

SEC. 6. That all ordinances or resolutions or parts of the same inconsistent herewith be and the same are hereby superseded.

Adopted July 24, 1906.

A RESOLUTION to vacate parts of Third, Fourth, Spruce, Church and Robinson streets in the City of Wilmington, Delaware.

Be it resolved, by the Board of Directors of the Street and Sewer Department:

Part of Third street vacated.

Part of Fourth street vacated.

Part of Spruce street vacated.

Part of Robinson street vacated.

Operative on completion of viaduct.

SECTION 1. That Third street from the westerly line of the right of way of the Philadelphia, Wilmington and Baltimore Railroad Company to a line parallel to and one hundred and eighty-two feet and ten inches (182 ft. 10 in.) westerly from the westerly side of Church street; Fourth street from the westerly line of the right of way of the Philadelphia, Wilmington and Baltimore Railroad Company to a line parallel to and three hundred and twenty-five feet and nine and one-half inches (125 ft. 9½ in.) easterly from the easterly side of Church street, said line being the westerly side of a street or thoroughfare known as Bridge street at a proposed width of seventy feet (70 ft.); Spruce street from the southerly side of Third street to the southerly side of Robinson street; Church street from the southerly side of Fifth street to the northerly side of Third street and Robinson street from the easterly side of Spruce street to a line parallel to and two hundred and ninety feet and ten inches (290 ft. 10 in.) westerly from the westerly side of Church street as they are at present laid out, be and the same are hereby vacated, and that the land within the area of the parts of the several streets hereby vacated shall be used and occupied by the Philadelphia, Wilmington and Baltimore Railroad Company, and by such other owner or owners of property abutting on street hereby vacated, *provided, however,* that this resolution shall not be operative or effective only on the completion of the projected viaduct over the tracks of the said company at Fourth street.

SEC. 2. That all ordinances or resolutions or parts of the same inconsistent herewith, be and the same are hereby superseded.

Adopted April 9, 1895.

A RESOLUTION removing certain streets from the city plan.

WHEREAS, It is deemed important to the growth and prosperity of the City of Wilmington that sites for the erection of large manufacturing industries and for other purposes, be made available for occupation by the removal from the official plan of the City of Wilmington of certain unopened and unused proposed streets when such removal becomes necessary and the public interests are not affected thereby, therefore

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, that the following proposed streets now laid out and represented upon the plan of the City of Wilmington, which have not been opened and used as streets or public highways, namely: Removing certain streets from the city plan.

Lobdell street westerly from the westerly side of Buttonwood street to the Christiana river. Lobdell street.

Townsend street northerly from the northerly side of Lobdell street to Christiana avenue. Townsend street.

Buttonwood street northerly from the northerly side of Lobdell street to the Christiana river. Buttonwood street.

Locust street northerly from the northerly side of "A" street to the Christiana river. Locust street.

Church street northerly from the northerly side of "A" street to the Christiana river, be and the same are hereby removed, obliterated and effaced from the official plan of the streets of the City of Wilmington, and the City Engineer is hereby directed to change the said plan so as to conform to this resolution. Church street.

Adopted May 8, 1900.

A RESOLUTION removing certain streets from the city plan.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, Delaware:

Removing parts of Woodlawn avenue and Tenth street from the city plan.

That the following streets represented upon the plan of the City of Wilmington known as Woodlawn avenue between Fifth and Seventh streets; Tenth street at or near the intersection of Grant avenue and Fifth street between Woodlawn avenue and Rodman street crossing the right of way of the Baltimore and Ohio Railroad Company, be and they are hereby removed, obliterated and effaced from the official plan of the streets of the City of Wilmington and the City Engineer is hereby directed to change the said plan so as to conform with the requirements of this resolution.

Adopted November 6, 1900.

A RESOLUTION removing portions of B, D, E, Speakman, Hartman, Bush and Lambson streets from the city map for the Benefit of Wilmington Malleable Iron Company.

WHEREAS, The Wilmington Malleable Iron Company, a corporation of the State of Delaware, has purchased and is about to occupy and build upon certain property located in the Second Ward of the City of Wilmington, and

WHEREAS, The said Wilmington Malleable Iron Company has in contemplation and has already commenced the construction of several large buildings for the purpose for which said company was incorporated, and

WHEREAS, There appears at present upon the map of the City of Wilmington certain streets, to wit: "B" street, "D" street, "E" street, Speakman street, Hartman street, Bush street and Lambson street, which would if legally opened, cut through the proposed buildings of the said Wilmington Malleable Iron Company, and

WHEREAS, The Board of the Street and Sewer Department deem it in the interest of the City of Wilmington that so much of said streets as appear upon the said map to cut through the said property of the Wilmington Malleable Iron Company should be removed from the said map of the said City of Wilmington, therefore

Be it resolved, That all that portion of "B" street extending from the easterly side of Goodman street to Christiana avenue, and all that portion of "D" street extending from the easterly side of Goodman street to Christiana avenue, and all that portion of "E" street extending from the easterly side of Goodman street to Christiana avenue, and all that part of Speakman street, extending from the northerly side of "F" street to Christiana avenue, and all that part of Hartman street, extending from the northerly side of "F" street to Christiana avenue and all that part of Bush street extending from the northerly side of "F" street to Christiana avenue, and all that part of Lambson street, extending from the northerly side of "F" street to Christiana avenue, as the same now appear upon the said map of the said City of Wilmington, be and they are hereby removed and obliterated from the said map.

Parts of certain streets removed from city plan.
"B" street.
"D" street.
"E" street.
Speakman street.
Hartman street.
Bush street.
Lambson street.

Adopted May 12, 1903.

RESOLUTION removing portion of West Fourteenth street west from Brinckle avenue from the city map.

WHEREAS, William R. Brinckle and others own and are about to build upon certain property located in the Highlands, in the Seventh Ward of the City of Wilmington, and

WHEREAS, There appears at present upon the map of the City of Wilmington a certain street, namely West Fourteenth street, which would if legally cut through westerly from Brinckle avenue, cut through the land of the said William R. Brinckle and others, and

WHEREAS, On account of the close proximity of Pennsylvania avenue to the said West Fourteenth street at this point, and

WHEREAS, The Board of Directors of the Street and Sewer Department deem it in the interest of the City of Wilmington that so much of said street as appears upon said map to cut through said property of the said William R. Brinckle and

others should be removed from the said map of the said City of Wilmington, therefore

Portion of West 14th street removed from city plan.

Be it resolved, that all that portion of West Fourteenth street, west from Brinckle avenue as the same now appears upon the said map of the said City of Wilmington, be and it is hereby removed and obliterated from the said map.

Adopted July 7, 1903.

A RESOLUTION to remove Sixteenth street from the city plan between Mt. Vernon avenue and Rising Sun lane in the City of Wilmington, Delaware.

Be it resolved, by the Board of Directors of the Street and Sewer Department:

Part of 16th street and Rising Sun lane removed from city plan.

SECTION 1. That all that portion of Sixteenth street as laid down on the plan of the City of Wilmington aforesaid between the westerly side of Mt. Vernon avenue and the easterly side of Rising Sun lane be and the same is hereby removed from said plan.

SEC. 2. That all ordinances and resolutions or parts of the same inconsistent herewith be and they are hereby superseded.

Adopted September 27, 1904.

A RESOLUTION to vacate certain streets and parts of certain streets, to change the direction of parts of certain streets and to fix and establish the location and width of certain streets north of Market street and east of Thirty-second street in the City of Wilmington, Delaware.

Be it resolved, by the Board of Directors of the Street and Sewer Department:

Part of 33rd street vacated.

SECTION 1. That all that portion of Thirty-third street as at present located from the northerly side of Washington street to the southerly side of Wooddale avenue be and the same is hereby vacated.

Parts of 34th street and 35th street vacated.

SEC. 2. That all that portion of Thirty-fourth street and Thirty-fifth street as they are at present located from the northerly side of Market street to the southerly side of Wood-dale avenue be and the same are hereby vacated.

Part of 36th street vacated.

SEC. 3. That all that portion of Thirty-sixth street as at present located from the northerly side of Market street to the southerly side of West street as it is located in Section 15 of this resolution, be and the same is hereby vacated.

Parts of Monroe street and Madison street vacated.

SEC. 4. That all that portion of Monroe street and Madi-son street as they are at present located from the proposed points of change in direction of said streets east of Thirty-sec-ond street, as hereinafter established in this resolution and the northeasterly boundary of said city, be and the same are here-by vacated.

Part of Jefferson street vacated.

SEC. 5. That all that portion of Jefferson street as at present located from the northeasterly side of Talley street ex-tended, as located in Section 7 of this resolution, and the northeasterly boundary of said city, be and the same is hereby vacated.

Parts of Washington street, West street and Tatnall street vacated.

SEC. 6. That all that portion of Washington street, West street and Tatnall street, as they are at present located, from the northeasterly side of Talley street as located in Section 7 of this resolution, and the northeasterly boundary of said city, be and the same are hereby vacated.

SEC. 7. * * * * * * * * * *

SEC. 8. * * * * * * * * * *

A RESOLUTION regarding the vacation of Water street from French street to Poplar street.

WHEREAS, The Philadelphia, Baltimore and Washington Railroad Company has been engaged in the carrying out of extensive improvements in the City of Wilmington, which improvements, among other things, will result in the doing away

of grade crossings, with their attendant dangers, and will be of a great benefit to the community, and

WHEREAS, The said railroad company is desirous of erecting a large and commodious passenger station, extending from French street easterly in the said city, and

WHEREAS, Water street, as now located and laid out, is but little used by the citizens of Wilmington for any purpose whatsoever, while Front street, extending east of Poplar street and west of French street, in the said city is situated only 104 feet north of the said Water street, and

WHEREAS, It is necessary for the railroad company to secure possession of and to occupy the said portion of Water street, from French street east to Poplar street, in order to enable them to erect a station adequate to the needs of the said City of Wilmington;

Proceedings to vacate part of Water street declared to be taken.

Now, therefore, be it resolved, That for the purpose of effecting lawful vacation of the street mentioned in the preamble of this resolution to the extent and in the manner as hereinbefore described, said Street and Sewer Department do promptly inaugurate and prosecute to conclusion, as speedily as practicable, all legal proceedings necessary therefor, and immediately advertise its intention to apply to the Court of General Sessions at the November term to appoint Commissioners to consider such vacation, and upon authorization of such vacation as the result of said proceeding the Board will cause such vacation to be fully and finally effected, but all the damage and expenses of said vacation of said street, including all court costs, awards of commissioners, etc., shall be paid by the said railroad company.

Payment of costs, &c.

Adopted October 10, 1905.

A RESOLUTION to vacate a portion of Bowers street as located by a resolution passed by the Board of Directors of the Street and Sewer Department, August 21, 1900, in the City of Wilmington, Delaware.

Be it resolved, by the Board of Directors of the Street and Sewer Department:

SECTION 1. That all that portion of Bowers street as located by a resolution passed by the Board of Directors of the Street and Sewer Department, August 21, 1900, between Todd's lane and the city line that is not included in that portion of Bowers street as located by the aforesaid Board of Directors by a resolution passed February 27, 1906, between Todd's lane and the city line, be and the same is hereby vacated. Part of Bowers street vacated.

SEC. 2. That all ordinances and resolutions or parts of the same inconsistent herewith be and the same are hereby superseded.

Adopted March 6, 1906.

A RESOLUTION to vacate a part of Canal street and a part of Goodman street in the City of Wilmington, Delaware.

WHEREAS, The Otto Gas Engine Works has purchased and is about to occupy and build upon certain property located in the Second Ward of the City of Wilmington.

AND WHEREAS, The said Otto Gas Engine Works has in contemplation and has already commenced the construction of several large buildings for the purpose for which said company was incorporated.

AND WHEREAS, There appear at present upon the map of the City of Wilmington, certain streets, which would, if legally opened, cut through the proposed buildings of the said Otto Gas Engine Works.

AND WHEREAS, The Board of Directors of the Street and Sewer Department deem it in the interest of the City of Wilmington that so much of said streets as appear upon the said map to cut through the said property of the Otto Gas Engine Works should be removed from the said map of the said City of Wilmington, therefore

Be it resolved, by the Board of Directors of the Street and Sewer Department:

Part of Canal street vacated.

SECTION 1. That all that portion of Canal street as laid down on the plan of the City of Wilmington, as aforesaid, from Dock street to the Christiana river, be and the same is hereby removed and obliterated from the said map.

Part of Goodman street vacated.

SEC. 2. That all that portion of Goodman street as laid down on the plan of the City of Wilmington, as aforesaid, from Christiana avenue to the Christiana river, be and the same is hereby removed and obliterated from the said map.

SEC. 3. That all ordinances and resolutions or parts of the same inconsistent herewith be and the same are hereby superseded.

Adopted May 8, 1906.

A RESOLUTION removing and obliterating Warner street between Beech and Sycamore streets from the city map.

WHEREAS, Warner street appears upon the map of the City of Wilmington, as extending from Oak street to Sycamore street, a distance of two blocks.

AND WHEREAS, Warner street has been opened and is in use as a street from Oak street to Beech streets only, and the projected portion from Beech to Sycamore street has never been opened, and no title to the bed of the projected street from Beech to Sycamore streets has been acquired by the City of Wilmington.

AND WHEREAS, Several dwellings have been built on the southerly side of Sycamore street, which dwellings would be within the lines of the said Warner street if the said Warner street were laid out as projected.

AND WHEREAS, The owners of the land which would be a portion of the bed of the said Warner street, if the said Warner street were laid out as projected, are desirous of building thereon.

AND WHEREAS, There is no demand whatever for the laying out and opening of the said Warner street from Beech to Sycamore streets.

Now, therefore, it is hereby resolved and ordered, by the Board of Directors of the Street and Sewer Department of the City of Wilmington that the projected lines of the said Warner street from Beech to Sycamore streets be removed, obliterated and stricken from the city map. Projected lines of Warner street removed from city plan.

Adopted September 25, 1906.

A RESOLUTION to remove Thirty-fourth street between Thatcher street and the P., B. & W. Railroad from the city plan.

Be it resolved, by the Board of Directors of the Street and Sewer Department of the City of Wilmington, Delaware:

SECTION 1. That all that portion of Thirty-fourth street between the southerly side of Thatcher street and the northerly side of the P., B. & W. Railroad, as laid down on the plan of the City of Wilmington, Delaware, be and the same is hereby removed from the city plan. Part of 34th street vacated.

SEC. 2. That all ordinances and resolutions or parts of same inconsistent herewith be and the same are hereby superseded.

Adopted October 27, 1908.

A RESOLUTION to vacate West Liberty street between Madison street and Marsh road in the City of Wilmington, Delaware.

Be it resolved, by the Board of Directors of the Street and Sewer Department:

SECTION 1. That all that part of West Liberty street lying between Madison street and Marsh road shall be vacated and the same shall be stricken from the city plan. Part of West Liberty street vacated.

SEC. 2. That all ordinances and resolutions or parts of the same inconsistent herewith be and the same are hereby superseded.

Adopted March 23, 1909.

A RESOLUTION to vacate a part of Linwood avenue in the City of Wilmington, Delaware.

WHEREAS, The Delaware Terra Cotta Company, a corporation of the State of Delaware, is about to occupy and build upon certain property situated between Twenty-sixth and Twenty-seventh streets and between Heald and Claymont streets in the Ninth Ward in said City of Wilmington, a plant for the manufacture of brick and clay products, and

WHEREAS, There appears at present on the map of the City of Wilmington, Linwood avenue, which would if now legally opened, cut through the proposed buildings of the said Delaware Terra Cotta Company's works, and

WHEREAS, The Board of Directors of the Street and Sewer Department deem it in the interest of the City of Wilmington that so much of said avenue as appears on said map to cut through said property of the Delaware Terra Cotta Company should be removed from the said map of the said City of Wilmington, during the time said company shall be engaged in the manufacture of clay products from the clay of the tract of land known as the Mendenhall estate; therefore

Be it resolved, by the Board of Directors of the Street and Sewer Department:

Part of Linwood avenue temporarily removed from city plan.

SECTION 1. That all that part of Linwood avenue as laid down on the plan of the City of Wilmington as aforesaid between Twenty-sixth and Twenty-seventh streets be and the same is hereby temporarily removed and obliterated from said map for the purpose and time set forth in the foregoing preambles.

SEC. 2. That all ordinances and resolutions or parts of same inconsistent herewith be and the same are hereby superseded.

Adopted January 15, 1907.

A RESOLUTION fixing the fiscal year of the Street and Sewer Department.

WHEREAS, April 31st, which has heretofore been the termination of the fiscal year of the Street and Sewer Department, is found to divide the business in such a way as to carry the work of one season into two reports, and also to bring the settling up of the year's operations and the office work of making a report for inspection of committee of the "Council" (as specified by law) so close upon the time that should be used for getting out specifications, plans and estimates for the next season's work, that it is thought best to change the date to January 31st, of each year, so that the winter time will divide the season's work and enable the Secretary and his assistants to get up all reports fully and at proper time, therefore

Be it resolved, by the Board of Directors of the Street and Sewer Department:

SECTION 1. That the present fiscal year of the Street and Sewer Department be made to terminate January 31, 1894, and that each succeeding fiscal year shall terminate on January 31st. Ending of fiscal years.

SEC. 2. That all resolutions or parts of same inconsistent herewith be and the same are hereby superseded.

Adopted January 23, 1894.

PART VI

Rules and Regulations

OF THE

Board of Water Commissioners

RULES AND REGULATIONS OF THE BOARD OF WATER COMMISSIONERS,

As Amended and in Force December 31st, 1909.

		Page			Page
1.	Chief Engineer	1075	16.	Annual Water Rents	1081
2.	Duties of Chief Engineer	1075	17.	Contracts for Private Pipes	1082
3.	Repairs to Machinery	1076	18.	Applications for Permits.	1083
4.	Chief Engineer to Make Annual Report	1076	19.	Applications for Fire Service	1083
5.	Plans of Construction and Estimates of Work	1076	20.	Detector Meters for Fire Service	1083
6.	Report of Water Pumped	1076	21.	Leakages in Fire Services	1084
7.	Reports to Meetings of Board	1076	22.	Obstructing Access to Fixtures	1084
8.	Foreman	1077	23.	Horse Trough	1084
9.	Enginemen	1077	24.	Meters for Manufacturers	1085
10.	Registrar	1077	25.	Advertisements of Water Rents Due	1085
11.	Duties of Registrar	1078	26.	Wash Paves	1085
12.	Weekly Pay-rolls	1079	27.	Meter Supply	1086
13.	Penalty for Introdution of Fixtures	1079	28.	Water Rents	1088-1091
14.	Wasting Water	1079			
15.	Fire Hydrants	1080			

Chief Engineer and Superintendent. Bond.

Section 1. The head of this department shall be called the Chief Engineer and Superintendent of the Water Works. He shall hold his office until his successor shall be chosen, unless sooner removed by the Board of Water Commissioners. His salary shall be fixed by the Board of Water Commissioners. He shall give security satisfactory to the Board of Water Commissioners in the sum of ten thousand dollars for the faithful performance of the duties of his office.

Duties of Chief Engineer.

Sec. 2. He shall have charge and care of the Water Works of the City of Wilmington, including engine houses and their machinery, the reservoirs, pipes, mains, dams, fire hydrants, and property; and control and oversight over all

the officers and men connected therewith, and assign and direct their duties, so as to carry on the details of the works; he shall attend to the direction of all new works now or hereafter to be constructed. He shall appoint said employees or discharge them for cause.

Repairs.

SEC. 3. He shall take under the direction of the Board of Water Commissioners, immediate measures for the repair of any damage which may happen to the machinery or fixtures connected therewith.

Annual reports.

SEC. 4. He shall, annually, at the first stated meeting in July report to the Board of Water Commissioners, the condition of the works under his care, and, if any, what extensions are necessary, and shall embody in said report the annual statement of the Registrar.

Plans and estimates for construction and repairs.

SEC. 5. He shall prepare plans of construction; make all necessary estimates connected with the Works; whether for construction or repairs; certify all accounts, bills, and contracts for materials purchased, or labor performed under his direction, shall notify the Board of Water Commissioners of all breaches of contract, and supervise and arrange all contracts for labor to be performed or material to be purchased and for the purchase or laying down of such mains, pipes, and fixtures, as may, from time to time, be directed by the Board of Water Commissioners.

Report of water pumped.

SEC. 6. He shall, at each regular meeting of the Board of Water Commissioners, lay before them the number of gallons of water raised by each pump, and the amount of coal consumed by each.

Weekly report of operations.

SEC. 7. He shall, at each regular meeting of the Board of Water Commissioners, report in writing the working conditions and operation of the Water Works, and make such suggestions for its improvement and extension as may be advantageous to the system.

Foreman.

SEC. 8. In this department there shall be one Foreman. The Foreman to have charge of all the mains, stop-cocks, fire hydrants and other fixtures appertaining to the distribution of water through the city, and to personally attend to the laying of new pipes as well as the repairs of pipes, fire hydrants, and other fixtures that may require it; to attend to the drilling of pipes for making attachments, shutting off the pipes for repairs on account of leaks, and shut off the water, and cut off such pipes as may be directed, on premises on which the water rent has not been paid; to keep an account of all new pipe laid and repairs made, and all materials used for the same, under his charge; shall have charge of the pipe yards, and repair shop, and attend to the receipts of all new pipes and fixtures that may be delivered by contract or otherwise, and see that a proper stock of articles to guard against accidents shall be kept on hand, and report to the Superintendent of the Department, any deficiency that may exist therein; to report at such times as may be required, all the work and labor performed and material required for new work, make out the time-list of all the men employed under him, shall attend to the check of all undue waste of water from leaks, carelessness, or other causes, and report any infringements of the Laws, Rules and Regulations provided for that purpose, to the Superintendent of the Department; and such other duties as may be assigned to him by the Superintendent. He shall be appointed by the Board of Water Commissioners.

Engineers.

SEC. 9. There shall be the required number of enginemen. Said officers shall perform such duties, and at such times, as the Superintendent may direct. They shall be appointed by the Board of Water Commissioners.

Registrar.
Bond.

SEC. 10. There shall be, in this department, a Registrar of Water who shall hold his office until his successor shall be appointed, unless sooner removed by the Board of Water Commissioners. His salary shall be fixed by the Board of Water Commissioners. He shall give security in the sum of fifteen thousand dollars, satisfactory to the Board of Water Commissioners, for the faithful performance of the duties of his office.

Registrar's office hours.

SEC. 11. The said Registrar shall have an office at which he shall attend during office hours, said hours being fixed by the Board of Water Commissioners. He shall keep all the accounts of the Water Works, opening an account with each person using the water of the city, charging each item separately, and giving credit in the account when paid; he shall receive at his office, all moneys due to the city for water. He shall issue all permits for the use of said water, and shall keep a list of those who have contracted for a supply of water by private pipes, the dates of the contract, and the rates at which said water is furnished. He shall, monthly, send to the Board of Water Commissioners a statement of his accounts, and make a full settlement of the same, which shall always be open and subject to the examination of the Board of Water Commissioners, or any member thereof; he shall make daily deposits during the month of January, in each year, and during the other months of the year, at his discretion; *provided, however,* he shall make at least, one deposit each and every week, one of which to be in settlement of his monthly accounts for the preceding month of all moneys coming into his hands, as near the close of bank hours as possible, taking therefor from the bank officers, duplicate certificates of deposits in form provided by the Board of Water Commissioners, one of which he shall immediately thereafter file in the office of the City Treasurer, and the other in the office of the Water Department, as his voucher.

Registrar's annual report.

The Registrar shall, annually, on or before the 30th day of June, report to the Chief Engineer the proceedings of his department during the year, showing the number of tenants supplied with Brandywine water; the amount received from them; the number of new tenants for the year, and the amounts paid or due by them, both for ferrules and water, separating the items of expenditure under the different heads of salaries, extension of pipes, distribution, machinery, and incidentals, together with such other information as he may have as will enable the Board of Water Commissioners to acquire a correct knowledge of all matters relating to the Water Works.

All bills ordered by the Board of Water Commissioners to be paid for on account of Water Works, shall be paid directly to the parties having the claims, in the same manner as bills of other departments of the city are paid, and the bills thereof, be sent by the Secretary of the Board of Water Commissioners to the City Auditor, who shall return the same to the office of the Water Department and be filed therein.

Pay rolls.

SEC. 12. The Chief Engineer of the Water Works shall make, or cause to be made out on Monday of each week, a pay-roll containing the name of each person employed by the day or week, their occupations, and the amounts due to such persons, and submit the same to the Board of Water Commissioners, and if said pay-roll shall be approved, orders shall be drawn in favor of the Chief Engineer to pay the parties named therein.

Penalty for putting in fixtures without permit.

SEC. 13. If any person shall introduce on any premises additional water fixtures of any description, or form any connection with any water pipe, without a written or printed permit from the Registrar, such person shall pay for each and every such offence the sum of five dollars, and shall not be entitled to receive any permit for the introduction of city water on any premises whatever until such penalty and the water rent shall be paid, and the supply of city water to such premises may be discontinued until such payments shall be made.

Penalty for wasting water.

SEC. 14. If any person shall permit the Brandywine water to flow unnecessarily from any private pipe or fixtures thereof on his or her premises, or the premises by him or her occupied, either within a building or enclosure, or any street or alley, every such person shall forfeit and pay for each such offence, the sum of five dollars; and in all cases where several persons receive a supply of water by branches uniting with a private common pipe, every person who may so receive the water, shall be bound to keep such common pipe in repair, and in case of waste by leak or leaks therefrom, shall be severally liable for the penalty above imposed. If at any time it shall be necessary to repair a private pipe within the limits of the cartway of any public street or alley, a permit shall be first

taken for so doing, and the expense of such repairing paid by the person or persons interested, under the penalty of five dollars for the neglect of this provision. Not more than one house shall hereafter be supplied with water from one ferrule, and when two or more houses shall have been thus supplied previous to the passage of these Laws, Rules and Regulations, and any one of such houses shall be delinquent in payment of water rent, or have leaky fixtures on the premises, it shall be lawful to cut off the supply by detaching the pipe of the delinquent or leaky premises, until the leaky fixtures are repaired, the delinquent rent and all expenses of detaching and re-attaching paid, without any liability or claim whatever against the city by reason of such shutting off of the water. Upon information being lodged with the Chief Engineer or other officers of the Water Works, of the actual or probable evasion or violation of any of the provisions of these Laws, Rules and Regulations; in any building, lot of ground, or premises into or through which pipes for conducting a supply of Brandywine water may be laid, it shall be lawful for the said Chief Engineer or other officers, directed by him to enter such building, lot of ground and premises, for the purpose of examining the pipes of conduit, and the cocks and fixtures thereof, and of ascertaining whether the same are in proper order and repair, and if for want of such repair, there be a waste of water, and the owner or occupier of such building or lot of ground or premises, shall neglect or refuse, upon notice being given by the said Chief Engineer or other officers, to have the necessary repairs made forthwith, the said Chief Engineer or other officers delegated by him are hereby authorized and empowered to shut off the water leading to such building, lot of ground, or premises, and any person who shall let on the water before the necessary repairs are made, shall forfeit and pay the sum of five dollars, and any person who shall obstruct or oppose the said Chief Engineer or other officers in making such entry and examination as aforesaid, shall forfeit and pay for each offence the sum of twenty dollars.

Waste of water.

Repairs.

Penalty.

Fire hydrants.

SEC. 15. If any person or persons, entrusted with the wrenches or spanners of the fire hydrants, shall neglect or re-

fuse to shut the same as soon as the fire is extinguished, he or they shall forfeit and pay for such offence the sum of five dollars. If any person or persons, except the Chief Engineer and Superintendent, or some person by his authority, shall open or shut the stop-cocks, fire hydrants or water gates attached to the pipes of conduit, he or they for every such offence, shall forfeit and pay the sum of five dollars. If any person or persons shall break, injure, or do any damage whatever to the pumps, pump-house or machinery, erected on the Brandywine, or elsewhere, for the purpose of supplying this city with water, or to the pipes of conduit laid for the passage of the water or to the fire hydrants, stop-cocks, water gates, hydrants, pumps, or other fixtures appertaining to, or connected with the same, or shall throw or put any stones, filth, or any foreign matter or substance whatever into the basins, or reservoirs, or shall damage or injure in any manner the fencing and paling enclosing the same, or shall break the earth in any of the streets, lanes, or alleys of the city for the purpose of disturbing, moving, or injuring the pipes of conduit, or obstructing the passage of water through the same, every person so offending, shall forfeit and pay for every such offence a fine not exceeding fifty dollars and not less than five dollars, and pay the cost of repairs made necessary by reason of the damage done.

Water rents.

SEC. 16. The Annual Water Rents shall be payable to the Registrar, at the office of the Department annually, in advance in the month of January, in every year; and if the water rent or any portion thereof remains unpaid on March 1st, succeeding, the water may be shut off, and the water shall not again be supplied or furnished to such premises, except upon payment of all arrears of Water Rents. In all new contracts, to be granted, and all vacant houses where water has been shut off by the Department, the Registrar shall be authorized to demand and receive, in advance, such Water Rents as may become due for the balance of the year. When city water is supplied to any premises through meter at meter rates, bills shall be payable quarterly, and when any bill is not paid within

thirty days after the close of any quarter, the water may be shut off as in other cases of delinquent Water Renters.

The minimum charge for water furnished by meter measurement shall be collected in January, and if the Water Rent or any portion thereof remain unpaid on March 1st, succeeding, the water may be shut off as in other cases of delinquent Water Renters.

When the amount of Water Rents exceeds the minimum, the excess shall be collected quarterly.

Contracts for use of water.

SEC. 17. Every contract which shall hereafter be made by the city, with any person or corporation for a supply of Brandywine water by private pipe, shall be deemed and taken as a permanent contract, unless either party, from a change of circumstances, may desire to make a new one, in which case the person or corporation using the water, or the Registrar on behalf of the city, shall have power, at any time, by giving one month's written or printed notice, to which the signature of the said Registrar is affixed, to the other party to the contract, to avoid and rescind the same at the termination of said notice. In case notice comes from the Registrar, and the use of the water is discontinued, the proportional share of Water Rent paid in advance, shall be refunded by the city, and the Registrar is hereby authorized and directed to do so.

If any person who has contracted, or may hereafter contract for a supply of said water, shall permit any person or persons other than members of his or her family, or persons residing or dwelling in his or her house, to have free or common access to the hydrant in the premises by them occupied, for the purpose of using the said water, the person or persons so permitting the said water to be so used, and the person or persons so using the said water, respectively, shall upon conviction thereof, pay a fine of five dollars. *Provided*, that this provision shall not be construed to prevent the owner or occupier of premises in which there is a hydrant, from permitting any other person who has any existing contract for said water, but whose private pipe or hydrant is out of order, and under-

going repairs, to obtain and use the water from such hydrant, while such repairs are going on and until they are completed.

Applications for alterations or extensions.

SEC. 18. All persons desiring a water supply from the City of Wilmington, or to extend water pipe in connection therewith or make alterations or extensions in the water fixtures, must first make application at the office of the Water Department upon printed forms to be furnished by said Department, the blanks to be properly filled in and signed by the owner of the premises, and a licensed plumber, authorized to do the work; to whom a permit will be issued, except in case where water is required for the purpose of erecting new buildings, then a permit will be issued to a contractor or builder, without the signature of the owner of the premises, if satisfactory information is given.

In every application for a permit the applicant or applicants shall state fully and explicitly the purpose to which he or she or they intend applying the water of the city; and every person wilfully making a false statement as to said application, shall forfeit and pay for the offence the sum of ten dollars. In case any person or persons shall hereafter carry off the said Brandywine water in any way whatsoever, from the city hydrants, or from any private premises, to be used out of this city, except in times of fire, or unless duly authorized by the Registrar, such person or persons shall forfeit and pay for every such offence, the sum of five dollars.

Private fire hydrants.

SEC. 19. All persons desiring a water supply from the City of Wilmington for the purpose of extinguishing fire, or to extend water pipe in connection therewith or make alterations to the present system, must make application at the office of the Water Department, the blanks to be properly filled in and signed by the owner of the premises.

The water to be used for this purpose (extinguishing of fire) must pass through a detector meter of the by-pass and automatic check valve variety that will properly meet the conditions of a fire or sprinkler supply. The said detector meter and the installation thereof to be paid for by the applicant,

also all piping and valves from the end of the branch connection in the city main to a point designated by the Chief Engineer shall be installed by the Water Department and at the expense of the owners.

If upon examination of the fire hydrants and automatic sprinklers now existing, there be found any leakages causing a waste of water, the Chief Engineer is hereby authorized and directed to place a detector meter on the said supply, at the expense of the owner of the property.

Any person or persons who have been permitted to introduce upon his, her or their premises, a fire hydrant, automatic sprinkler or other appliances for the protection of their property from fire who shall use or permit the same to be used for sprinkling or washing the yards or streets, filling wells, boilers, tanks, or for any purpose whatever, except its legitimate use—for the extinguishment of fires—shall forfeit and pay a fine of twenty dollars for the first offence, and upon a repetition of said offence the Chief Engineer may be authorized to detach the connection of said fire hydrant, automatic sprinkler or other appliances from the main, notwithstanding the cost of the introduction of said fire hydrant, automatic sprinkler or other appliances was paid by the said parties.

Obstruction of fire hydrants.

Sec. 20. Any person who shall obstruct the access to any fire hydrant, stop-cock, or other fixture, connected with the supply of water to the city, by placing thereon stone, brick, lumber, dirt, or any other material, or who shall permit any such material to be placed thereon by those in his employ, shall be subject to a penalty of twenty-five dollars for each offence, and an additional sum of ten dollars for each day the same shall be continued after notice for the removal of such obstruction shall have been served, and pay all expenses of removal.

Horse troughs.

Sec. 21. Any person or persons allowing water to flow into and from any horse trough; or other fixture used for watering horses, (public fountains and water troughs excepted, as approved by the Board of Water Commissioners.)

when not in actual use shall forfeit and pay a penalty of five dollars for each and every offence.

Meters.

SEC. 22. Whenever it shall be considered necessary to accurately determine the quantity of water used by manufacturers, distillers, hotels or other consumers, the Chief Engineer may attach meters to the several pipes supplying the premises, to which meters the officers of the department shall have access at all reasonable times.

Place and time of payment of water rents.

SEC. 23. The Registrar shall cause to be inserted in two or more of the newspapers of the city, the time and place, when and where the water rents are payable, and the penalties for delay in payment, and for non-payment thereof.

Use of wash paves.

SEC. 24. Wash paves are exclusively for washing the foot pavements of the premises charged with the wash pave, and should their use be permitted for sprinkling the street or driveway in front of said premises it is a concession by the Water Department and not a privilege of the owner, and must be confined to the space immediately fronting said premises and used with moderation before the hour of seven o'clock A. M. and after six o'clock P. M. And when any of the Water Department officials believe said sprinkling unnecessary, immoderate, or not confined to the limits hereby specified he shall forbid its further use, and any person or persons who shall thus continue to use it after said notice without permission from the Registrar shall forfeit and pay a penalty of five dollars for each any every offence.

Size of service.

SEC. 25. All new and renewed service pipes from the curb stop to the inside of the cellar wall must be not less than three-quarters ($\frac{3}{4}$) of an inch in diameter and laid at a uniform depth of not less than four (4) feet below the finished surface of the ground or sidewalk, and not less than three-quarter ($\frac{3}{4}$) inch diameter pipes must be extended through the cellar to all branches and continuously to all hopper closets.

When the connection is made, the trench must be left open, until the work is inspected and approved by an Inspec-

tor of the Water Department. The owner, contractor or plumber must notify the office of the Water Department, twenty-four hours before such inspection is required.

The water supplied to any premises shall not be turned off, or turned on, (except in cases of emergency) at the curb stop, except by the Foreman or authorized employe of the Water Department. When the water is shut off in case of emergency the Water Department office must be notified immediately thereafter.

Vacant houses.

VACANT HOUSES.

Where houses are vacant in the month of December of each year and to remain vacant for an indefinite time, and written notice is sent (prior to January 1st), to the office of the Department requesting the water to be turned off, the Water Department will shut off the water.

The said property shall be exempt from Water Rent during such vacancy, from the first day of January until occupied, at which time the owner shall pay the Water Rent in advance for the balance of the year, and the Water Department will turn on the water.

When any water fixture has been removed during any year, written notice must be sent to the office of the Department prior to January 1st, following said removal, in order to have the Water Rent charged for said fixture deducted from the bill for the following year.

Every person violating this section shall be liable to a penalty of five dollars for each and every offense.

The use of water through meters.

SEC. 26. All persons desiring a water supply from the City of Wilmington through meters, must first make application at the office of the Water Department upon printed forms to be furnished by said Department, the blanks to be properly filled in and signed by the owner of the premises, except in the case where water may be required for the purpose of erecting new buildings, or making repairs to buildings, then the con-

tractor or builder may sign the said application. The applicant must agree to conform to and abide by the Laws, Rules and Regulations governing the Water Department of the City of Wilmington, Delaware, and the distribution of the Brandywine water.

All meters shall be located, placed and kept from all obstructions so as to afford easy access thereto, that they can easily be read and inspected. All meters belonging to the Water Department shall be placed by said Department and kept in repair, except when broken or damaged, whether by frost or otherwise caused by the negligence of the owner or tenant of the premises where such meters may be placed, in such case the owner shall pay the Department for said damage or injury.

The Chief Engineer or an authorized employe of the Department shall have free access at proper hours of the day, to enter the premises to read the meter or to remove the same for repairs and replace the same.

After a meter shall have been placed on the pipe or pipes supplying any premises, the owner of the premises shall be responsible for any damage which said meter may sustain, resulting from the carelessness of the owner or tenant, and for any damage, which may result from hot water or steam setting back from a boiler.

It shall be the duty of the Chief Engineer to investigate and determine in each case the responsibility for the damage and the cost of the renewal or repairs.

No meter shall be disconnected from the pipes, moved, disturbed or seal broken by any person except an authorized employe of the Department. Every person violating this section shall pay to the Department a penalty of not less than five ($5.00) dollars for each offense.

No person shall be entitled to recover for damages, or to have any portion of the Water Rent refunded, for any stop-

page of supply of water occasioned by choking or accident to the meter, or for the stoppage of water for the purpose of changing the meter, or making repairs, and the Chief Engineer shall have the right to shut off the water while making such change or repairs.

The Water Rent shall be due and payable at such times, and with such discount as the Board of Water Commissioners may from time to time direct, and subject to the general rules for the payment of water rents.

If a meter should become inoperative and fail to register correctly the Water Rent shall be based upon the quantity of water that passes through the meter when in good working order, for a corresponding period.

On failure to comply with the Laws, Rules and Regulations established as a condition to the use of water, or to pay the water rates in the time and manner provided, the water may be shut off until payment is made of the amount due.

TARIFF OF WATER RENTS.

SEC. 27. The following are rates at which Brandywine water is furnished:

CHARGES FOR DWELLING HOUSES.

Dwelling houses of four or more rooms having hydrant in yard or kitchen, or both, one family	$5.00
Small dwellings containing two rooms, one family	3.00
Small dwellings containing three rooms, one family	4.00
Dwellings occupied by more than one family:	
Each suite of two rooms, one family	3.00
Each suite of three rooms, one family	4.00
Each suite of four or more rooms, one family	5.00
Baths, each,	3.00
Water closets and urinals, self closing or with reservoir, each	2.00
Water closets and urinals of other description	3.00
Wash paves of every description, or hose attached to hydrants for that purpose (no part of year)	2.00

Bidets and foot tubs, each	1.00
Wash basins and sinks in chambers or pantry, each	1.00

CHARGES FOR STORES, ETC.

Stores, offices, factories, shops, etc	3.00
Stores, without water in them	1.00 to 3.00
Basins or sink additions, each	2.00
Water closets and urinals, each	3.00
Bars with water in or out of bar	5.00
Wash basins and sinks, each	2.00

CHARGES FOR STABLES.

Private stables with one horse	3.00
Private stables each additional horse	1.00
For washing (with use of hose) each carriage or vehicle	1.00
For washing (without use of hose) each carriage or vehicle	.50
For market horses exclusively, each stall	.50
For each cow	.50

MISCELLANEOUS.

Lawn sprinklers or hose used as such	5.00
Eating and oyster saloons	3.00
Green and hot-houses, private	3.00
Green and hot-houses for florists, each	5.00
Heating boilers, circulating, private dwellings	1.00
Heating boilers, circulating, public buildings	5.00 to 10.00
Fish stalls	5.00 to 20.00
Market houses, each stall, in addition to appliances	.25
Churches	5.00
Pools in churches	3.00
Each tub at Public Washing establishment	3.00
Each tub in hotel or dwelling	1.00
For common family bakeries, in addition to charge for dwellings	3.00
Barber shops, one basin	3.00
Barber shops, each additional basin	1.00
Drug stores	5.00
Fountains in drug store, each per month	1.00

Locomotives, each 40.00
Boilers, other than for steam engines, per horse power.. 2.00
Photograph galleries 10.00

RATES FOR WATER CONSUMED BY METER MEASUREMENT.

First two thousand (2,000) cu. ft. or less per quarter, 75 cents per thousand.

Next three thousand (3,000) cu. ft. or less, per quarter, 60 cents per thousand.

Next five thousand (5,000) cu. ft. or less, per quarter, 45 cents per thousand.

Next ten thousand (10,000) cu. ft. or less, per quarter, 40 cents per thousand.

Next thirty thousand (30,000) cu. ft. or less, per quarter, 38 cents per thousand.

Next fifty thousand (50,000) cu. ft. or less, per quarter, 37 cents per thousand.

Next one hundred thousand (100,000) cu. ft. or less, per quarter, 36 cents per thousand.

That is, the cost of two hundred thousand cu. ft. is $75.45.

All in excess of two hundred thousand cu. ft., 35 cents.

Minimum charge	$\frac{5}{8}$	in. meter	$10
" "	$\frac{3}{4}$	" "	15
" "	1	" "	20
" "	$1\frac{1}{2}$	" "	30
" "	2	" "	40
" "	3	" "	50
" "	4	" "	60
" "	5	" "	70
" "	6	" "	80

BUILDING PURPOSES.

Dwelling houses (five or less), each $1.00
Each additional house in excess of five, embraced in one permit and in same locality, each ..... .60

Other small buildings, same rate as for dwelling houses.
Large buildings, special rates.

Revised, amended, approved and adopted by the Board of Water Commissioners, September 23, 1907.

PART VII

Rules and Regulations

OF THE

Board of Park Commissioners

PARK REGULATIONS.

The Board of Park Commissioners of the City of Wilmington, under their power to make all needful rules and regulations for the government of any parks under their control, have made the following. Persons violating these rules are liable to penalties in amount not exceeding $10 for each offense.

I. No person shall cut, break, or otherwise injure or deface any trees, shrubs, plants, turf, rock, or any building, fence, bridge, or other structure within any Park.

II. No person shall carry firearms, shoot birds, or other animals, or throw stones or other missiles, or in any way disturb or annoy the birds or animals within the boundaries of any Park.

III. No person shall make a fire or throw or place upon the ground any lighted match, cigar, or other burning substance; or set a trap or snare; or injure, annoy, or disturb or have possession of any wild animal or bird, or injure or destroy any nest in any Park.

IV. No person shall be guilty of any threatening, abusive, insulting, or indecent language, or commit any obscene or indecent act in any Park.

V. No person shall, without permission from the park authorities, ride or drive upon any part of the park except upon roads intended for that purpose. The use of the roads, except in cases where persons have legal rights therein to the contrary, and also speeds allowable on the roads, are subject to such directions as the Superintendent may from time to time give; but automobiles and other vehicles must not at any place go faster than is consistent with safety to those using the roads.

VI. No person shall enter upon or loiter about any prohibited place within the Park, or violate any special notice or injunction, or loiter in any place after having been directed by an officer to move on, or refuse to obey any reasonable request of any park guard.

VII. No person shall erect, paint, paste or otherwise affix or distribute any signs, advertisements or circulars within any Park.

VIII. Loose horses, cattle, fowls, dogs and other domestic animals are not allowed in any Park. Dogs kept in leash are not prohibited.

IX. No person shall injure, deface, destroy or remove any notice or regulation for the government of the Parks.

APPENDIX

TO THE

Charter, Laws and Ordinances, Revised

To January 1, 1910

APPENDIX.

City Elections Law.

(1.) In June, 1910, the Court in Banc decided that the Act of the General Assembly making the time for the holding of elections in the City of Wilmington to be every "second" year, was invalid because of the failure of the clerks of the Senate and House of Representatives to enter the aye and nay vote upon their journals. This work is brought up to December 31, 1909, and for this reason the law is left unchanged. The decision of the Court would make the holding of elections, now, every "fourth" year.

Appropriations to Fire Companies.

Appropriation to fire companies.

(2.) Sec. 68. (In any appropriation for fire companies in the City of Wilmington by the Council the amount granted to any one company shall not be in excess of Three Thousand Dollars in any one fiscal year; [but to any fire company not having a chemical engine or combination hose and chemical wagons the amount granted shall not be in excess of Thirty-five Hundred Dollars in any one fiscal year], except that said Council may grant an additional sum) [not exceeding Two Thousand Dollars annually to the Washington Fire Company, No. 7, for the use of their chemical engine] [and a like sum not exceeding Two Thousand Dollars annually to the Weccacoe Fire Company, No. 8, for the use of its chemical engine.] [*Provided, however*, that the said Council shall pay to the Delaware Fire Company, No. 3, of Wilmington, Delaware, the sum of Thirty-five Hundred Dollars per annum.] [That from and after the first day of July, A. D. 1898, there shall be appro-

Act of Feb. 7, 1887, 18 D. L. 338.

Act of April 21, 1897, 20 D. L. 675.

Act of April 13, 1895, 20 D. L. 157.

Act of Feb. 25, 1897, 20 D. L. 663.

Act of March 19, 1897, 20 D. L. 668

Act of June 9, 1898, 21 D. L. 248

priated by the City Council of the said City of Wilmington for, and the Mayor and Council of the said City of Wilmington be and are hereby authorized and directed to pay to the said Phoenix Fire Company, No. 4, of Wilmington Delaware, the sum of Five Thousand Dollars per annum to be paid semi-annually in the sums of Twenty-five Hundred Dollars in the months of March and September.]

For ordinances relating to the Water Witch and Brandywine Fire Companies, see pp. 642 and 645 of this volume.

See 20 D. L. 675, and 25 D. L. 315.

See also page 553 this volume.

The Act of April 7, 1909 (p. 553 of this volume) authorizes The Council to make *contracts* with the fire companies, *"provided, however,* that the amount named in said contract shall not be less than the amount *now appropriated* by the Council to the respective companies." The above is printed to show the amounts *"now appropriated."*

Sewer Connections.

(3.) On page 139 of the charter (this volume) is the following: "And if the expense incurred by the Board of Health in making the aforesaid *connections,*" etc. This word "connections" referred to sewer connections, but the manner in which the amendment was made to the old law, leaves it, now, meaningless. The reference to sewer connections is now on pages 142 and 143 of the Charter.

Obsolete Ordinances.

This work contains a number of useless and obsolete ordinances, such as providing for a bellman, making it unlawful for minors to collect and assemble in the streets in the evening without the written consent of their parents, provisions as to wharves, &c. Their repeal was not asked for because it was thought occasions might arise at times when the enforcement of them would answer a purpose. Certain obsolete ordinances have been allowed to remain as showing how the city treated and dealt with its own property.

INDEX

A

ABATEMENTS

of nuisances **(See Nuisances, Board of Health.)**
of taxes, when paid in July 94

ACADEMY (OLD)

title to, vested in City.....523

ACCOUNTS, BILLS AND ORDERS

duties of Auditor respecting **(See Auditor)**
Clerk of Council respecting **(See Clerk of Council)**
Treasurer respecting **(See Treasurer)**

ACKNOWLEDGMENTS

of deeds, &c., before Judge of Municipal Court..... 52
of deeds, &c., before Mayor 34

ACTS OF THE GENERAL ASSEMBLY

to revise and consolidate acts relating to the City (charter)..17-146
inconsistent with charter, repealed.....146
relating to the City of Wilmington.....149-562
supplementary to the charter.....149-156
relating to bridges 510-512
City officers 157-167
City railways 256, 493-509
elections 272-418
exemptions from taxation 484, 485-492
the harbor 185-204
miscellaneous 518-562
Police Department 205-220
public parks 168-173
public schools 419-453
registration of voters 272-328
sales of real estate 513-517

ACTS OF THE GENERAL ASSEMBLY—(Continued)
sewers and drains 238-248
sinking fund and City debt 454-484
Street and Sewer Department 224-237
streets and roads 249-271
Water Department 174-184

ADMINISTRATOR
of assessors and collectors, powers of 95, 99

ADVERTISEMENTS
of appropriation ordinances 77
assessment lists 89
of Board of Education's accounts 431
of bogus sales prohibited 524
of impounded animals 747
of names of delinquent taxables 99
of proposals for contracts 179, 234, 437-438, 613-614, 978
of proposals respecting garbage 139, 797, 801
of sale of property by Board of Health 140
on telegraph, &c., poles, prohibited 994

ADVISORY BOARD
action of, not binding on any officer or department of City 105
composition of 30
exception, as to settlement of disputes 105
Mayor to preside at 105
members of, may speak but not vote in Council 105
members of, not to receive compensation 105
secretary of, qualifications, duty and salary 604-605

AFRICAN UNION CHURCH
burials in ground of, prohibited 520

"AGENT OR PERSON IN CHARGE"
definition of, as regards removal of snow and ice from sidewalk 1019-1020

ALLEYS (See Streets)
ashes, garbage, &c., placed in, prohibited 766-767
nuisances in, abatement of 143
paving of, by Board of Health 780

AMBULANCES
penalty for interfering with, or obstructing 986, 1023-1024
right of way of 986, 1024

AMUSEMENTS (See Shows)

powers of Council to regulate....56, 522

ANIMALS

at large in streets, prohibited....745, 747
dead animals, casting of into streets, prohibited....773
driving, &c., of, on grass plots....995-996
driving, &c., of, on sidewalks, prohibited....742-743
driving of, at an immoderate gait....745
dumb, what term includes....972
fee for impounding....747
impounding of animals at large....747
notice to owner of....747
penalties for cruelty to....971
in public parks, regulations of....1095, 1096
racing of, in streets, prohibited....748
reclaiming impounded animals....747-748
regulations for slaughtering and sale of meat of....805-808
sale of, by dog catcher....748
shooting of, unlawful in public parks....1095

APPEALS

to Advisory Board....105
to Board of Assessment, Revision and Appeals....89-90, 488
from Building Inspector....840-841
to Finance Committee as to taxes on horses....930
from Municipal Court, when and how allowed....48, 49
from surveyors and regulators to Council....133

APPLICATION TO OPEN AND EXCAVATE STREETS

how to be made to Street and Sewer Department....1047-1048

APPROPRIATIONS

accounts of, by whom kept....566-567
for Christiana River (improvement of)....204
by Council, expenditures not to exceed head or item....75
by Council, to certain departments, when made....59, 60
for current expenses, how made....75
for extraordinary occasions, how made....75
extraordinary, when and how paid....76
ordinances making, to be published....77
ordinance making appropriations for 1909-1910....989
to Board of Education....59, 434-435, 437
to Board of Health....59
to fire companies, deductions from as penalties....642

APPROPRIATIONS—(Continued)

to Militia of State 548
to Park Commissioners 59, 170
to Police Commissioners 59
to Police Pension Fund 219
to Sinking Fund Commissioners 455
to Street and Sewer Department.....59, 231-232
to Water Department 59
to Wilmington Institute (Free Library).....525, 526, 527, 985
transfer of, how made 75

AREAWAYS

on Gilpin avenue, regulations of.....256
unlawful on sidewalks 1016

ARMORY

lease of land for erection of.....924-925

ARRESTS

for taxes, by assessors and collectors..... 99

ASCENTS

map of City relating to, of streets, &c.....129
ordinance relating to, of streets (ancient).....935
of streets omitted **(See Preface)**

ASHES

of crematory, Council disposed of.....804
in what to be placed 894, 998
placing of, in private alleys.....766
in streets 999
by whom to be removed.....225, 998
not to be mixed with rubbish.....998
throwing of, in sewers, prohibited.....1053
throwing of, in streets, a nuisance.....758

ASIATIC CHOLERA **(See Contagious Diseases)**

burial of bodies of persons dying from.....785-786
duty of physicians to report cases of.....783

ASSAULT AND BATTERY **(See Municipal Court)**

ASSES **(See Horses)**.

ASSESSMENTS (See Assessors and Collectors of Taxes)

additional, for taxes 89, 90, 91
for City taxes, how made 88-91, 488
election expenses 406
lists of, where kept 89, 90
warrants upon 92
corrected lists of, to whom delivered 92
inspection of lists of 93
laid before Council, when 91, 488
powers and duties of Board of Assessment, &c., respecting 81-92
what property exempt from, for taxes (See Exemptions From Taxation) 83-84, 485-492
what property subject to, for taxes 83, 84-86
of benefits for opening streets 112-118, 228
of cost of repairing footways 122, 123, 124
of cost of alteration of water courses 137
of cost of paving and curbing 119
recording of same by Auditor 120
of damages and benefits to land taken for streets and sewers 228
of damages for taking lands for parks 171
of damages for vacating roads 110
of damages for opening streets 111-118
of cost of new sewers 238-244
for school taxes, how made 90-91
for sewers, apportionment of 239
abatement of 241-242
collection of 242
lien of 241
rate of 239-240
of corner lots 240
what land exempt from 243
on land abutting on streams 243
when payable 241-242
for taxes, when to be completed 83, 89-90, 91
of taxes on horses, how made 103, 929
marsh lands 521

ASSESSMENT LISTS

corrected, by whom and when made 92
of horses, appeals from 930
of horses, for taxation 929
public notice of filing of 89
warrants upon 92
where kept 89, 90

ASSESSORS AND COLLECTORS

to advertise lists of unpaid taxes..... 99
allowance of errors due.....83, 94
appearance of, before Committee on Finance.....101
appointment of clerks by.....599
may arrest delinquent taxables..... 99
duties of Auditor respecting.....569
balances due from, how collected.....101-102
to give bills and receipts for taxes..... 93
powers of Board of Assessment, &c., respecting..... 81
bonds of 82, 102
to deliver certain certificates to City Solicitor..... 98
to furnish certificates of deposit.....101
to make corrected assessment lists..... 92
City officers 30
clerks of 82
duties of Clerk of Council respecting.....567
how to collect taxes..... 97-99
to assess and collect taxes on horses, &c., when.....103, 929-930
when to complete assessments.....83, 89, 90, 91
Council may enjoin additional duties upon..... 93-94
may examine county records..... 88
death or removal of..... 94-95
where and when to deposit, and how to draw out moneys...986-987
duties as to making lists of children between ages of seven and fourteen 443
duties of, as to rural and built-up real estate.....488
duties of, when City limits extended..... 21-27
election and residence qualifications of..... 81-82
extension of powers of, beyond term of office..... 83
powers of executors and administrators of..... 94-95, 99
may examine books in office of Chief Engineer of Surveying Department 105-106
freehold qualifications of 82-83
sale by, of horses for unpaid taxes.....930-931
liability of, for collection of taxes..... 94
oath of 102
payments by, of taxes collected.....101
receipts to be given by, when horse tax is paid.....930
salaries of 93, 102
settlements by 101
substituted, powers and duties of..... 95
to keep accounts and certain books of tax receipts.....930
vacancies in office of, to be filled by the Council.....94-95

ASSESSORS' AND COLLECTORS' CLERKS

appointment, duties and salaries of..... 82, 599
may be removed by assessors and collectors.....599

ASSIGNATION HOUSE (See House of Ill-Fame)

keeping of, prohibited 536, 759

ASSISTANT CITY SOLICITOR

appointment of, by City Solicitor..... 66
discharge of, by City Solicitor..... 66
qualifications of 603
salary of 66, 603
salary of may be increased by the Council..... 66

ASSISTANT CLERK OF STREET AND SEWER DEPARTMENT

salary and bond of 1008

ASSISTANT ENGINEERS AND SURVEYORS

(See Surveyors and Regulators)

duties of, as to registration of real estate.....106
duties of, general 621
election and terms of.....618
oaths and bonds of.....618
salaries of 608-609, 618

ASSISTANT ENGINEERS IN CHARGE OF SEWERS

(See Engineers in Charge of Sewers)

ASSISTANT ENGINEERS OF FIRE DEPARTMENT

duties of 630
election of 158-159
qualifications and salaries of.....630, 644
removal of 631

ASSOCIATE JUDGE OF NEW CASTLE COUNTY

to appoint commissioners to open streets.....112-115
to appoint Deputy City Judge for Municipal Court..... 39

ATTORNEY GENERAL

in person, or by deputy, may prosecute in Municipal Court..... 46
to be notified of and to prosecute without delay violations of election Acts 301, 336
disputes between littoral proprietors settled by.....203

AUCTIONS

powers of Council to regulate 56, 535
regulations of (See Auctioneers).....954-957

AUCTIONEERS

auctioneers, who are 955
auction house, but one allowed to.....955
Auditor, duties of, respecting.....570, 954
Council may license, tax and regulate.....56, 535
Council may regulate (under charter)..... 56
fees of 955, 956
licenses to, by Clerk and President of Council.....954
limit of time to pay over proceeds of sales by.....957
penalty for sales by, without license.....956
powers of, under licenses 954
refusals by, to pay over proceeds of sales.....957
revocation of licenses of.....955
term of license of.....954
unlawful fees taken by.....957

AUDITOR

accounts, bills &c., duties of, as to
52, 56, 63, 65, 180, 217, 235, 236, 433-434, 560, 568, 569, 570, 571, 575, 590, 621, 988, 1079.
appointment of 64
to collect fees from auctioneers.....954
duties of, as to auctioneers.....570
to record assessments for curbing and paving.....120
to examine accounts of certain officers.....570
to examine accounts of collectors of taxes.....569
to audit accounts of Street and Sewer Department.....236
to examine bills and accounts of Water Department.....180
bills and accounts against Board of Public Education 433
bills against the City 570, 958
to approve bills of Police Commissioners.....217
duties of, as to bills and orders of Street and Sewer Department.235
duties of, as to bills of Water Department.....1079
to keep certain books.....235
bond of 65, 569
approved by Finance Committee 65
Building Inspector to make daily and monthly reports to.....837
a City officer 30
approval by, of statements from Clerk of Municipal Court..... 52
to make certain collections 570
to countersign warrants of Board of Public Education.....433, 434

AUDITOR—(Continued)

to countersign warrants of Street and Sewer Department.....235
to countersign checks and drafts of Water Department.....180
refusal of, to countersign orders..... 65
duty of Auditor when overruled..... 65
to countersign money orders.....63, 65, 575
deposit of moneys by 571
duties of, in general 65, 568-571
duties of, as to certificates of City debt.....568
duties of, as to inspection of oils.....590
to examine orders on and accounts of Treasurer.....569
office hours of 571
private business not to be transacted during.....571
reports of engineers and surveyors to.....621
salary of 68, 571, 608
statement of receipts by.....570
to make and deliver statement to Clerk of Council.....988
penalty for failure to make such statement.....988
term of office of 64
warrants for witness fees in Municipal Court to be approved by.. 50

AUDITOR'S CLERK

appointment, term and duties of..... 64
bond of 572
may be discharged by City Auditor..... 64
powers and duties of, may be increased by Council..... 64
salary of 64, 571-572, 608
salary of, may be increased by the Council.....64-65

AUTOMOBILES

(See Motor Vehicles) 554

AWNINGS

obstructions to public lamps by, prohibited.....968
regulations concerning 760
side awnings prohibited 1015-1016

AYE AND NAY VOTE **(See Votes)** 54, 57, 65, 76, 77, 614

B

BADGES

of firemen, and regulations of.....630, 631, 636
of police, unlawful use of.....211

BAIL (See Bail Bonds)

who may take 39-40, 164

BAIL BONDS (See Bail)

endorsements on 45
to whom forwarded 45

BAILIFF OF COUNCIL

care of City Hall by 577
duties of 577-578
election of 157, 577
office hours of 577
salary of 158, 578, 608
term of office of 157, 577

BALCONIES

regulation of the projection of, into streets 859, 1013-1015

BALL

throwing, or playing of, in streets, prohibited 753

BALLAST

discharging of, into creeks, prohibited 916

BALTIMORE AND PHILADELPHIA R. R. COMPANY

certain streets vacated for 266
construction of overhead bridges by 510

BANCROFT'S ROAD

part of, to be vacated when 270

BANKRUPT SALES

(See Bogus Sales) 524

BARBERS

not to have more than one apprentice 543
to post card showing right to act as 544
not to follow occupation without certificate 544
definition of 544
penalty for violating provisions of act relating to 544
registration and annual fee of 542
to register with Board of Barber Examiners 542
not to keep shop open on Sunday 540
penalty for keeping open on Sunday by 540

BARBER EXAMINERS (Board of)

how appointed and of whom composed.....540
each member of, to give bond.....541
to furnish certificate of registration.....543
compensation of 543
organization, rules, regulations and powers of.....541
terms of office 540
vacancies in, how filled 540

BARK (See Corders and Measurers of Wood and Bark)

measurers of 584, 585
powers of Council to regulate measurement, &c., of..... 56
regulations of, concerning 584, 585

BATHING

in creeks and races, prohibited.....753
proviso as to persons properly clothed.....753

BATH HOUSES

Water Department may construct, when, &c.....183

BAY WINDOWS (See Windows)

regulation of, on Gilpin avenue.....256

BEASTS (See Animals)

BELLS

on locomotives, to be rung.....755

BELL MAN

to give notice of sales by Dog Catcher.....747-748

BENEFITS TO BE ASSESSED IN OPENING STREETS, &c.....115

BENZINE (See Oils)

BERRIES (See Fruit and Grain Market)

BICYCLES

driving on grass plots, unlawful.....995
to have gong or bell.....1022, 1023
to have light after sundown.....1022
persons riding, to keep to the right.....1023
unlawful to ride, on sidewalks (exception).....1023

BICYCLES—(Continued)

penalty for violating ordinance as to.....996, 1022, 1023
speed of 1022

BIDS (See Contracts)

advertisements for, for contracts for public work.....613-614
bonds with, by whom drawn.....980
to be accompanied with certain bonds.....979
for City contracts 978
for collection, &c., of garbage.....797, 801
not received from certain persons.....979
to Board of Public Education 437-438
to Street and Sewer Department.....234
to Water Department 179

BILLS

examination of, by Auditor.....570
of Board of Public Education 433, 434
against City, when and how paid.....957-958
of Police Commissioners, payment of.....216-217
of Police Commissioners, approval of.....215
of Street and Sewer Department.....235
of Water Commissioners 180, 1079

BILLIARD TABLES

City may license 553

BIRDS

are "dumb animals" 972

BIRTHS (See Registrar of Births, &c.)

record of, by whom and how kept.....108-109
report of, to Registrar of Births, &c.....794

BLIND (Department for)

Council to make annual appropriation for.....985

BLOCKING STREET CARS

unlawful to do so wilfully or unnecessarily.....1027

BOARD OF ASSESSMENT, REVISION AND APPEALS

to hear appeals as to assessment for taxation.....89-90, 488
may examine plans, books, records, &c.....102
to classify real estate.....487

BOARD OF ASSESSMENT, REVISION AND APPEALS (Continued)
to certify to Council the value of built up and rural property....487
to lay assessments before Council....91
may adopt rules and regulations....81
may exercise supervisory powers over the assessors and collectors 81
composition of....80-81
powers and duties of....81, 89, 90, 91
salaries of members of....69, 608

BOARD OF BARBER EXAMINERS (See Barber Examiners)

BOARD OF DIRECTORS OF STREET AND SEWER DEPARTMENT (See Street and Sewer Department)

BOARD OF HEALTH (See Nuisances)
advertisements for collection and removal of garbage to be made by....138-139, 797, 801
alleys, yards, &c., may be ordered paved by....780
appointment by, of certain officers....771
appointment of members of, by the Mayor....137, 770
appropriation to, by Council....59
Board of Education to be notified by, of epidemic diseases....783
bond of garbage collectors, approved by....138-139, 800
building, &c., may be entered and inspected for nuisances by....784
certificates as to privy wells, record of to be kept by....778
Chief Engineer and Surveyor, a member of....137-138, 770
City Registrar or Registrar of Deaths to report to....794
composition of....137, 770
contagious diseases may be quarantined....784
contracts for collection and disposal of garbage to be awarded by 139, 797, 801
crematory under charge of....138-139, 803
duties of as to collection and removal of garbage by....801
epidemic diseases to be reported to, by medical attendants....783
executive officers of, powers and duties of 138, 770-771, 773, 776, 777, 808
executive officers of, appointment by....138, 770, 771
executive officers of, salary of....69, 604, 608, 771
expenses of abatements, how to be paid....772
garbage may be collected by, upon contractor's failure so to do..799
hog pens, powers and duties of, respecting....776
hospitals, may be established by, when....779, 780
inspector of meats to obey and report to....807
infected vessels may be ordered removed by....780-781
licenses to excavators, to be granted by....779
liens for abating nuisances....139

BOARD OF HEALTH (See Nuisances)—(Continued)

malignant diseases and powers and duties of, as to.....779
night soil, powers of, as to deposit of.....779
notices by, for abatement of nuisances.....771
nuisances in streets may be abated by.....143
nuisances, powers of, respecting 139, 771
offensive matter, power of any member, as to removal of.....773
offensive smells, power of Mayor and Council, as to.....772
officers of 137-138, 770-771
orders of, may be enforced by.....139, 143
penalty for not complying with directions of.....784
penalty for not reporting epidemic diseases 783
penalties for violation of quarantine regulations.....781, 782, 783
penalty for neglect of executive officers to inspect slaughter houses 776
permits of, to cleanse privy wells in July and August.....788
permits of, to disinter or remove dead bodies.....785, 792
powers of, (general) 138-144, 771
premises may be cleansed, and the expense thereof collected by..784
privy wells, powers of, as to.....141, 777
quarantine regulations may be established by.....780-784
removal of members of, by the Mayor.....138
salaries of members of.....69, 608, 770
salary of secretary of 608, 771
sewer connections may be compelled by.....142-143, 1049
sick may be removed by.....780
slaughter houses, may be ordered to be cleansed by.....775
slaughter houses to be inspected by executive officers of.....776
streets, alleys, courts and yards, not owned by City may be ordered paved by 780
vacancies in, how filled 138, 770
vessels that have, or have had, contagious diseases on board, may be removed one mile from City limits.....780
warrants to enforce entry by, to abate nuisances.....785
water standing in cellar, powers and duties of, as to.....773, 788
water in cellar, may be declared a nuisance by.....788
weeds must be removed when ordered by, penalty for not so doing 786

BOARD OF PARK COMMISSIONERS (See Park Commissioners)

BOARD OF POLICE COMMISSIONERS (See Police Commissioners)

BOARD OF PORT WARDENS (See Port Wardens)

BOARD OF PUBLIC EDUCATION (See Public Schools)

BOARD OF WATER COMMISSIONERS (See Water Department)

BOARD OF TRADE

to nominate Port Wardens.....194

BOARD WALKS

duties of Building Inspector as to 907
to be laid on sidewalks, when 1001-1002

BOGUS SALES

of clothing, &c., prohibited.....524

BOARD OF TRUSTEES OF POLICE PENSION FUND

Act providing for 216-220
appropriation to, by Council 219
of whom composed 218-219
how to invest pension fund.....220
presiding officer of Police Department to be president of.....219
to have a secretary.....219

BOMBS OR TORPEDOES

unlawful to sell, give away or explode, &c.....964

BONDS

bail, by whom taken and to whom forwarded.....39, 45, 164
of Board of Education 467, 470, 684
as to bonds of departments of the City and officials (See Proper Titles)
Board of Public Education work 438
of City, exempt from taxation.....104, 484
City ordinances, relating to.....649-741
committee on, duties of.....612
of contractors, when required, for city work in general.....978, 979
of contractors, by whom kept.....980
of contractors, who may be sureties for.....532, 980
of drain layers (master plumbers) 1039
endorsement on bail 45
garbage 800
issues of, to pay off City debt.....454, 458, 461, 664, 666, 668, 676, 684
members of Council not to be sureties for City officials.....607
for public parks
173, 464, 465, 468, 477, 653, 671, 678, 686, 692, 694, 701, 705, 713, 714, 718, 732.
rate of interest on, how fixed.....573
schools 467

BONDS—(Continued)

sinking fund act, extension of, to.....458, 461
sewers
469, 471, 477, 482, 669, 673, 680, 682, 688, 690, 696, 699, 710, 716, 722, 726, 729, 739
Solicitor, duties of, respecting.....573
for Street and Sewer Department work.....234
streets (improvement of)
463, 466, 469, 477, 482, 657, 659, 662, 669, 673, 680, 682, 688, 690, 696, 699, 710, 716, 722, 726, 729.
surety companies, may execute, when.....532
Taylor mortgage, for payment of.....470-471, 684
water, how issued and signed (obselete).....181
by Water Commissioners, when issued (obselete).....181
for Water Department work.....179
water supply, water rights and reservoirs
459, 462, 474, 479, 650, 651, 655, 703, 707, 719, 733

BONFIRES

making of, when prohibited.....751

BOOKKEEPER AND ASSISTANT CLERK

offices of, in Street and Sewer Department combined.....1034

BOOTHS (See Stands)

BOROUGH CHARTER

appointment of Burgesses, assistants and high constable..... 7
borough of Wilmington (original).....5-14
Burgesses in borough have powers of Justices of the Peace in county 10
corporate name of borough under..... 7
charter construed favorably for corporation under..... 13
corporate powers of borough under.....7-8
court house, power to erect under..... 13
election of Burgesses, high constable, &c., under.....8-10
fairs held yearly in October and April, under..... 11
fairs and markets selected by election, under..... 11
Governor to name Burgesses if no election, under..... 9
markets held weekly on Wednesday and Saturday, under..... 11
ordinances passed and repealed at town meetings, under.....12-13
penalty for persons elected refusing to serve, under..... 12
powers of Burgesses, under.....7-13

BOULEVARDS

location, course and direction of.....257

BOUNDARIES

of City 17-28
corporate powers in extended 21-27
extension of 18-28
damages not allowed in, when 251
powers and duties of Department of Election in case of 405
new election districts in extension of 405
rate of taxation in extended 25-27

BOWERS STREET

part of, vacated 1066

BOWLING ALLEYS

City may license 553

BRANDYWINE FIRE COMPANY

location of 629
recognized by Council as part of Fire Department 645

BRANDYWINE PARK

Park Commissioners authorized to purchase lands for 981, 982

BRANDYWINE RIVER (See Rivers)

contamination of 980
harbor limits in 185

BREAD

Council may regulate weight of 56

BRICKS

Council may regulate size of 56
loose in sidewalks, a nuisance 1006, 1007

BRICK YARDS

fences around, required 749

BRIDGES

acts in relation to 510
condemnation of land for 512
overhead at Fourth street 511
overhead at Lancaster avenue 510
to be built subject to approval of Street and Sewer Department 510, 511, 512

BROAD STREET (See Seventh Street)

extension of 941
name of, changed to Seventh street.....941-942
width of 933-934

BUILDING INSPECTOR (See Building Regulations)

allowance to, of certain money for hire of horse and equipments..837
appeals from 840-841
who to hear 840
assistants to 580
board walks, duties of, as to 907
bond of 836
buildings may be entered by, in discharge of his duties.....903
buildings to be inspected by 837
certificate of, as to buildings used for moving picture shows....961
cesspools, duties of, as to.....778
duties of, as to party walls 847-848
as to moving picture shows.....961
as to numbering houses.....289, 578, 583
election and qualification of 836
examination by, of buildings to be altered.....903
fees for permits to be returned monthly to Treasurer by.....837
fees for permits granted by 839
frame shelter sheds may be permitted by, to be erected, when...858
general duties of 837
member of Board of Assessment, Revision and Appeals..... 81
not to be engaged in contract work, &c., while holding office....838
numbering of houses, duty of, as to.....578, 583
oath of office of.....837
party walls, duty of, as to.....847, 848
penalty for refusing to comply with orders of, as to the provisions of the building Act 904
permits, application to, for.....156, 837-839
permit to erect or repair buildings may be withheld by, until all taxes are paid 156
permits granted by, when to be acted upon.....839
permits, building, &c., without obtaining from.....838
permits not to be granted by, for erection of building unless street 40 feet wide, &c. 935
plans, specifications, &c., to be filed in office of.....838
reports of fees to be made to Auditor by.....837
salary of 609, 837
salary of, as a member of Board of Assessment, Revision and Appeals 69
Street Commissioner's former duties as to numbering houses, now performed by 581-582

BUILDING INSPECTOR (See Building Regulations)—(Continued)

temporary wooden sheds, when allowed by 857
wooden buildings, rebuilding or repairing of, when may be done 860, 903

BUILDING MATERIALS

deposits of, in streets, when allowed 1001
danger signals on 1002, 1003, 1052
encroachment upon adjoining owner, of building deposits, not permitted 1001
penalty for unlawful deposits of 1003
permits for deposits of, in streets 1001

BUILDING REGULATIONS (See Building Inspector)

arches and lintels, how to be constructed 856-857
balconies and porches, regulations as to. (See Balconies, see Porches) 859
bay, oriel, store or bulk windows, regulations as to (See Windows) 859
board walks, &c., to be laid on sidewalk when pavement taken up, &c. 906, 907, 1001-1002
brick walls, regulations, as to 846, 847
buildings of first class, regulations, as to 872-875
buildings of second class, regulations as to 875
cellars of new buildings to extend the length of whole house 850
chimneys and flues hereafter erected, how to be built 851
classification of buildings, first class to fourth class 872-876
concrete mortar, how to be used 844
cornices (exterior) and gutters to be of fire proof materials 855
deposits of building material in street, when allowed, (See Building Material) 1001
division walls of buildings, (with few exceptions) to be of hard non-combustible material 841
doors and doorways in theatres 887
exits of buildings through roofs 855
in public buildings 856
fences (wooden) regulations, as to (See Fences) 859
fire escapes, regulations as to 880
tower fire escapes 879
fire places and hearths, how constructed 851
floors and roofs, strength of 860-861
foundation walls, of what materials to be built 843
foundation walls of buildings, (excepting wharves) general provisions, as to 841-844
frame kitchens may be erected under certain conditions 858
frame shelter sheds, when may be constructed 858
furnaces, boilers, smoke pipes, regulations as to 852

BUILDING REGULATIONS (See Building Inspector)—(Continued)

height of stories of buildings, regulations as to.....846
hot air registers and flues, regulations as to.....853
iron or steel beams, regulations as to.....857
lights to be maintained, and "exits" to be placed near doorway in theatres 888
mansard roofs, regulations as to 860
minimum thickness of brick walls for business, manufacturing and public buildings 844-845
private dwellings 849
minimum thickness of walls surrounding stairs, elevator shafts, fire escapes, &c. 845
old party wall, when may be used for building purposes.....848
ordinance, relating to 836-904
painting of structural metal work, when and how to be done....871
party walls of stone, thickness of, (See Party Walls).....850
party walls, and duty of Building Inspector as to.....847, 848
porches and balconies, under 859
penalty for violations of building ordinance.....904
prosecutions for violations of building regulations, to be before Judge of Municipal Court 904
recesses in walls, regulations as to.....849
reinforced concrete, definition of 895
reinforced concrete, regulations as to 895, 902
roof covering, material to be used therefor and how to be built..854
seats and aisles in theatres.....886
school buildings hereafter erected 881-882
stairways in apartments.....892
stairways in factories and stores.....856
stairways in theatres 887, 888
stairways in warehouses 876
stone walls of buildings, requirements as to.....843
stove pipes, how to enter flues.....852
strength of materials, columns, &c, regulations, as to.....861-871
tenements and apartment houses, regulations as to.....890-894
definition of 894-895
theatres and places of public amusement, corridors, exits, balconies, staircases, lights, &c., regulations as to.....882-890
water closets, hydrants and ash receptacles in tenement and apartment houses 894
windows to be in all rooms of tenement and apartment houses..893
wood girders, joists, &c., regulations as to.....853
wood and wooden shingles, when may be used.....903
wooden sheds of a temporary character may be used, while building, with consent of Building Inspector 857, 858

"BUILT-UP" REAL ESTATE

how assessed, &c. 487

BULK HEAD LINES ON DELAWARE RIVER..... 201

littoral proprietors may erect..... 202

BULK WINDOWS (See Windows)

BURIALS (See Board of Health, Dead Bodies)

African Union Church not to be used for..... 520
of bodies of persons dying of infectious diseases..... 785-786, 792
graves, depth of, and regulations concerning..... 805
permits for, by whom issued..... 109, 795

BUSHEL

weight of, in sales of ice..... 953
corn meal 953

BUSH STREET

part of, removed from plan or map of City..... 1063

BUTTER (See Oleomargarine)

inspection and seizure of..... 825
regulations as to weight of..... 825

BUTTONWOOD STREET

part of, removed from plan or map of City..... 1061
part of, vacated 269

C

CANAL STREET

part of, vacated 1067

CANCELLATION OF SEWER, CURBING AND PAVING LIENS.... 246

CAPTAINS OF POLICE (See Police Force, Policemen)

number of 209
salaries of 210

CARCASS OF ANIMALS

sheep and lambs, when unlawful to sell..... 164-165

CARGO

damaged, view of, by Port Wardens....196

CARRIAGES (See Carriage Stands)

regulations for drivers of....746, 747
on sidewalks, prohibited....742-743, 995-996
standing of, in streets prohibited....744

CARRIAGE STANDS

at P., W. & B. R. R. Station....953
unlawful occupation of street for....953

CARTS (See Carriages, Wagons)

CATTLE (See Animals, Inspector of Meats)

at large in parks, penalty for....1096
inspection of....162
diseased, sale of prohibited....805-806

CELLARS

cesspools in, prohibited....786
doors to, how to be constructed....938
offensive, prohibited....788
removal of oyster shells from....776
renters of, how may use sidewalks....824
water standing in, prohibited....773, 788

CELLAR DOORS (See Cellar Ways)

CELLAR WAYS

power of Council respecting....55-56
on sidewalks....938, 1017-1018
unlawful on sidewalk....1016

CEMETERIES

exemption of, from taxation....83
permits for disinterments....785, 792
regulation of, as to bodies of persons dying from contagious diseases....785, 786, 792

CENTRE STONES

fixing of, in streets....111
penalty for removal of....111, 622
penalty for violation of regulations....951
regulations for protection of....951

CERTIFICATES

of Building Inspector 778
of Chief Engineer and Surveyor..... 108, 127, 622
of City debt by City Auditor..... 569
of Clerk of the Market 150-151
of collectors of taxes 99
for curbing and paving..... 126-127
of election, to and by whom issued..... 159, 411, 412
of election of members of Board of Public Education, and by whom issued 430
to inspectors of elections 276
as to number of votes cast..... 409
of nominations for elections 371, 373, 402, 425
of organization of political parties 370, 372, 402
of party symbols 371, 372, 403
of poll lists 410
as to registration of voters..... 307, 309, 311, 322, 325

CERTIFICATES OF INDEBTEDNESS (See Bonds)

registration of, by Auditor 568

CERTIORARI

recognizance to be given in proceedings in..... 48
writs of, to the Municipal Court..... 48

CESSPOOLS

Brandywine Creek, not to have, within 150 feet of it, unless watertight 980
Building Inspector to perform certain duties in regard to..... 778
in cellars, prohibited 786
cleasing of, when full and offensive..... 777
cleansing of, when unlawful without permit..... 788
connected with sewers, how 1054
contents of, running into street prohibited..... 773
when unlawful to dig 127
expense of cleansing, to be paid by owner..... 777
fees for permits for cleansing..... 788
inspection of construction of 778
license to excavators of 779
oozing of contents of, prohibited..... 777, 788
permits for connection of, with sewers..... 1054
removal of contents from 779
regulations for construction of 777
regulation and inspection of 777, 778
Street and Sewer Department may regulate and inspect..... 155-156

CHAIRMAN OF FINANCE COMMITTEE (See Committee on Finance)

salary of 608
a member of Board of Assessment, &c.....80, 141
Park Commissioners 168
Trustees of Police Pension Fund.....219
Managers of free library.....525, 528
receipt from City Auditor delivered to, by City Treasurer.....575
Treasurer delivered, to by City Auditor.....571

CHAIRMAN OF POLICE COMMITTEE

to be a member of Board of Trustees of Police Pension Fund....219

CHARTER

Acts supplementary to 149-156
of borough 5-14
of City 17-146

CHESTNUT STREET (Old) (See Tenth Street)

distance of, from Elizabeth street.....942
extension of 941
name of, changed to Tenth street.....941, 942
title of ordinance, ceding part of.....942
width of 934

CHIEF ENGINEER OF FIRE DEPARTMENT

assistants to, their salaries, &c.....159, 630, 631, 644
decisions of, final 642
election and term of office of.....159, 629
horse and carriage, allowance to, for.....644
horse and wagon to be provided by Council for.....643
penalty for refusal to obey commands of.....631
powers and duties of, as to fires.....629, 630
qualifications of 629
refusal of fire companies to respond to alarms to be reported by.642
removal of, by Council.....631
reports by 630, 632
responses to alarms from new boxes, companies to make, designated by 642
rules and regulations to be made by.....629
salary of 630, 644
vacancy in office of, filled by company.....159-160

CHIEF ENGINEER AND SURVEYOR

to advise City officers.....619
a member of Board of Health.....137, 770

CHIEF ENGINEER AND SURVEYOR—(Continued)

books of plans of City as to real estate therein to be made by.105, 620
said books to be kept by.....105-106, 620
book for registration of deeds to be kept by.....105, 620
building lines to be marked by.....622
to certify contracts 622
conveyances of land to be registered by.....106
duties of 105, 108, 187, 195, 230, 252, 289, 619-622
election and term of office of.....618
curbing and paving certificates to be given by.....126
custody of instruments, plans, records, &c.....231, 622
fees of 195, 622-624
fees, to be collected and accounted for, by.....621
fees of, for giving wharf lines.....195
lands contiguous to the City, duties of, as to.....250
maps for election districts to be furnished by.....289
map of City to be made by.....620
oath and bond of 618
a member of Board of Park Commissioners.....168
party walls, duties of, as to.....621
paving and curbing to be measured by.....119, 122
plans, surveys, instruments, records, &c., duties of, as to 195, 250, 619, 620
plot of wharf lines to be filed in office of.....187, 195
salary of 69, 195, 608, 618
Street and Sewer Department, duties as to.....230
violations of law, duty of, to enforce.....107
water fronts, duties of, as to disputed.....195
wharf lines to be furnished by.....195
records in Court House, may be examined by.....105

CHIEF ENGINEER OF WATER WORKS

bond of 1075
detector meter, may be used by, to find leaks.....1084
duties of, relative to plans, accounts and contracts.....1076
duty of, as to damage and cost of renewals or repairs.....1087
general duties of 1075-1076
fire hydrants, may be detached by.....1084
pipes to be examined by.....1080
premises may be entered by, to read meter.....1087
repairs to be made by 1076
reports of 1076
salary of 1075
term of 1075
waste of water to be prevented by.....1080
water meters may be attached by.....1085
weekly pay-rolls to be made by.....1079

CHIEF OF POLICE (See High Constable, Police Force and Policemen)

CHILDREN

births of, to be reported to Registrar.....109, 794

CHIMNEYS

Council may regulate the sweeping of..... 56
license to sweepers of.....626
regulations for construction of 851
penalty for fires breaking out in.....625

CHOLERA (See Board of Health, Contagious Diseases)

CHRISTIANA AVENUE

vacation of part of 267

CHRISTIANA RIVER (See Rivers)

appropriations by City for.....204
certain wharves on, exempt from leasing regulations.....1033
bulkhead lines on 185, 188, 190
harbor lines in 185
regulations as to speed of vessels in.....918

CHRISTIANA STREET (See Franklin Street, Old)

CHRISTMAS TREES

penalty for using streets for sale of, other than those allowed..1013
streets allowed to be used for sale of.....1013

CHURCHES

exemption of, from taxation 83

CHURCH LANE

near Old Swedes Church, width of sidewalks on.....1056

CHURCH STREET

part of, removed from plan or map of City.....1061
part of, vacated 1060
width and location of 941

CIRCUS (See Shows)

license fee for 959
unlawful to exhibit without a license for.....751

CITY AUDITOR (See Auditor)

CITY BOUNDARIES (See Boundaries)

CITY CONSTABLES (See Constables, Policemen)

duties of, respecting gunpowder 922, 923, 924
duties of, respecting tar, pitch, &c..... 967
penalty for failure of, to serve process..... 44, 51
powers and duties of 67
process to be served by..... 44, 51
witness fees not to be paid to..... 50

CITY COUNCIL (See Council)

CITY CLERK (See Clerk of Council)

CITY CLOCK

care of 598-599
regulator of, appointment and salary of, as to..... 598-599
regulator of, duties as to..... 598-599

CITY DEBT (See Bonds)

limitation of amount of..... 77-78
power to create 77
publication of statement of 74
reduction of 80
unlawful, responsibility of members of Council for..... 79

CITY HALL

care of, by Board of Council..... 157, 577-578
money may be borrowed on temporary loan in case of injury to.. 80

CITY JUDGE (See Judge of Municipal Court)

assistant to 39
bonds of Directors of Street and Sewer Department to be approved by 237
bonds of Police Commissioners to be approved by..... 206
Clerk of Municipal Court to be appointed by..... 47
Deputy Clerk, when may be appointed by clerk under..... 39
appointment to be in writing and approved by.... 39
appointment to be filed in Court..... 39
to be a conservator of the peace..... 51
elections, duties of, as to..... 410
powers and fees of..... 51
process issued by, how executed..... 51

CITY JUDGE (See Judge of Municipal Court)—(Continued)

oath of office of City officers may be administered by..... 32
salary of 68, 608
seal for Municipal Court and also for City Judge to be procured by 50
term of office of and qualifications of..... 36

CITY LIMITS (See Boundaries)

CITY MAP 129

CITY OFFICERS (See Respective Titles)

Acts relating to 157-167
death, removal or resignation of..... 35
eligible to re-election 31
fees or emoluments in addition to salaries not to be received by, when 70
moneys, where to be deposited, and how to be drawn out, by 63, 76, 575, 986-987
names of 30
oath of office of 31
ordinances relating to 565-609
qualifications of 31
vacancies by death or otherwise of..... 35
as to appointees of Council.....607
vacancies in City departments (See Respective Titles)

CITY RECEPTACLES FOR WASTE PAPER

penalty for any one defacing or abusing.....997

CITY REGISTRAR (See Registrar of Deaths, &c.)

CITY SOLICITOR (See Solicitor)

CITY SURVEYORS AND REGULATORS

(See Chief Engineer and Surveyor, Surveyors and Regulators)

CITY TAXES (See Taxes)

CITY TREASURER (See Treasurer)

CITY WARRANTS (See Warrants)

CLERGYMEN

ineligible to City office.....31
marriages to be reported by.....109, 795
names and residences of, to be reported by.....794

CLERKS OF ASSESSORS AND COLLECTORS

(See Assessors' and Collectors' Clerks)

CLERK OF CITY AUDITOR (See Auditor's Clerk)

CLERK OF COUNCIL

accounts, &c., duties of, as to.....63, 566, 567, 575, 615-616
appropriation accounts, duties of, as to.....566
appropriation ordinances to be published by..... 77
assessment of horses, when completed, to be placed in office of...929
assessment list and warrants to be delivered to assessors and collectors, by 92
assessments for opening streets, duties of, as to.....116
auctioneers to receive licenses from President of Council and....954
certificate of Fire Department election delivered to.....159
collectors' duplicates, &c., duties of, as to.....567
copying of papers by, at .01 per line of 12 words.....566
duty of, as to statements made by Treasurer and Auditor.....988
penalty for failure of, to publish statements.....988
elections, duties of, as to 409, 410
election, term and duties of.....157, 566, 568
lien book to be kept by.....567
money orders to be signed by.....63, 575
oaths of meat sellers to be administered and recorded by.....153
office room of 566
official bonds and oaths, duties of, as to.....613
pay-rolls, duties of, as to.....615-616
plan of market spaces filed with.....150
publication of ordinances, duties of, as to.....614
public notices as to assessment lists, to be given by..... 89
records, &c., to be kept by.....566
resolutions of Council to be recorded by.....568
salary of 68, 157-158, 568, 606, 608
warrants on assessment lists to be written and signed by..... 92

CLERK OF MARKET

accounts to be kept and submitted to Council by.....827-828
accounts of, to be examined by Auditor.....570
affidavit as to fees, to be made by.....829
bond of 826-827
butter to be weighed and tested by.....825, 827
butter, when to be condemned by.....825, 827
certificates for market spaces, issued by.....150, 818, 819, 820, 1012
compensation of 158, 609, 829
election and term of office of.....157, 816
fees collected by, to be paid over.....828, 831

CLERK OF MARKET—(Continued)

fees from fruit and grain markets.....821, 823, 834
fees respecting weights, &c.....816, 817
fees from hucksters' markets.....821, 823
ordinances relating to booths to be enforced by.....744
powers and duties of, in general.....827, 1012
premature fruit to be prevented by, from being sold.....808
record of market spaces allotted, to be kept by.....151
to be regulator of weights and measures.....814, 816
riots, &c., in markets to be suppressed by.....828
salary of 158, 609, 829
to be sealer of weights and measures.....157
spaces to be laid off and allotted by Council.....150
spaces may be allotted to two persons, alternately, by.....830
spaces unoccupied may be allotted by, when.....831
spaces, plan of, to be furnished by Street and Sewer Department to (See 150) 828
standards of weights and measures, to be kept in the custody of..814
stub book receipts, duties of, as to.....828
weights, &c., when condemned by.....815
weights and measures, to be tested and sealed by.....814, 815
wharf, market shed, duties of, as to.....831

CLERK OF MUNICIPAL COURT

absence of, who to act as.....39, 163-164
accounts to City Auditor to be rendered by.....570
appointed, by whom 47
bail may be taken, warrants issued and oaths administered by House Sergeant in absence of.....163-164
bond of 47
bond must be given by, or City Judge may make new appointment of 47
court may be opened and adjourned by, in absence of City Judge. 40
duties and powers of 39, 47
fines, &c., received by, duties of, as to..... 52
records, duty of, as to 39, 47
records to be transmitted by..... 49
salary of 60, 69, 606, 608
suspension of policemen to be certified by, to City Auditor and City Treasurer 44
witness fees, paid by City Treasurer on warrants of..... 50

CLERK OF TREASURER (See Treasurer's Clerk)

CLOCK (See City Clock)

COAL

to be delivered in bags, &c., on streets with car tracks on.....1028
on sidewalks, prohibited 743
weights of, may be regulated by Council.....56

COASTING

on sidewalks, prohibited 1020
on streets, prohibited 1020

COLLECTOR OF TAXES (See Assessors and Collectors)

COLORED CHILDREN

separate schools for 431-432

COMMISSIONERS OF SINKING FUND

(See Sinking Fund Commissioners)

COMMISSION TO CONDEMN LAND

death and vacancies in membership of, how filled.....503, 507
for parks 171
for sewers 137, 224, 228
for streets 111-117
unlawful for, to award damages, when.....253
for street railways 496, 501-502, 506
for turnpikes 118

COMMISSION OF REVIEW

as to streets 112, 117

COMMITTEES OF COUNCIL

appointment of 53, 54, 607, 610-615
bills against City, duties of, as to.....958
on bonds, duties of 612
entitled to legal opinion of City Solicitor, when.....573
estimates of cost of work, to be reported by.....607
on finance (See Committee on Finance)
fire companies 610
law, legislation 614
police 611
printing, duties of 613
public buildings (See Committee on Public Buildings)
public lamps 611
salaries of 608-609
standing, ordinances creating 610-615
vacancies in, by death or otherwise.....53, 54, 607

COMMITTEE ON FINANCE

accounts of City Auditor to be examined by....570
allowance by, of errors to assessors and collectors....83, 101
appeals to, respecting assessments of horses....930
appointment and duties of....610
assessors and collectors to appear before....101
Auditor's bond to be approved by....65
Building Inspector's bond to be approved by....836
certificates to be given by, to assessors and collectors on settlement with....101
chairman of, a member of Board of Assessment, &c....80-81
chairman of, a member of Park Commissioners....168
chairman of, a manager of free library....525
extraordinary appropriations to be approved by....75
pay of chairman of....69, 608
pay-rolls, duties of, respecting....616
sinking fund, duties of, as to....455

COMMITTEE ON FIRE COMPANIES

appointment of....610
engine houses to be visited by....610
fire alarm keys, duties of, as to....633
firemen's badges to be distributed by....636
Fire Department to be inspected by....634
reports to....632

COMMITTEE ON PUBLIC BUILDINGS

appeals from Building Inspector to....840
decision final if not appealed from....841
appointment of, by Council....611
bond of Clerk of Market to be approved by....826
duties of, as to leasing wharves....919
lease of certain land for armory, to be made by....924
moving picture shows, rules and regulations as to, made by Building Inspector and....961
number and duties of....611
salary of chairman of....608

CONCERT SALOONS (See Shows)

license fee for....522, 959

CONCORD PIKE OR ELLIOTT AVENUE

name of, changed to Concord avenue....1058

CONDEMNATION

of certain land, damages not allowed, when 253
of land for an overhead bridge 512
of land to improve navigation 197
of land for parks 171
of turnpike road 118
of sewers 233
of land for streets 111-118, 228
of property for streets and sewers 228
of land for street railways 496, 501, 506
of land for enlarging water supply 522

CONSTABLES

aid to Clerk of Market by, when 828
dismissal or suspension of 44, 209, 212, 548
officers of Board of Health 770
powers, duties and liabilities of. 67, 211-215, 298, 317, 637, 962, 964, 967
duties of, at elections 211, 298
may impound horses hitched to trees 969
to serve process 44, 317
regulations of, penalty for violation 208, 209, 215
special, appointment of 67

CONSTITUTION OF DELAWARE

to be taught and explained in public schools 450
City officers required to take oath to support the 31
by whom oath may be administered 32
oath for "public officers" under Art. XIV of the (See Annotations on pp. 31, 32, 38, 62, 227, 398)
form of, see Art. XIV of the

CONSTRUCTION OF CHARTER

to be favorable to corporation 13, 146

CONTAGIOUS DISEASES (See Board of Health)

burial of persons, dying of 785-786
powers of Board of Health, respecting 779
duties of Secretary of Board of Health and Secretary of Board of Public Education in case of 783

CONTAMINATION OF BRANDYWINE CREEK 980

CONTESTED ELECTIONS, RELATING TO CITY

provisions respecting 413-414

CONTIGUOUS LANDS

Chief Engineer and Surveyor, duties, of, respecting.....252
damages not allowed for certain, when brought within City limits by extension of boundaries 253
filing a plot of 250-251
how laid out in blocks, &c. 250
owners of, may lay out streets and fix grades in.....250, 253
Recorder of Deeds to record plots of.....252
Street and Sewer Department, duties of, respecting.....251, 254

CONTINGENT FUND

for police purposes 216

CONTRACTS (See Advertisements, Bids)

advertisements for proposals for, by Printing Committee.....613
of Board of Public Education.....437-438
bonds with bids for 979
as to City employees, not to include certain officers.....548
City work, proposals for (generally).....978
City Solicitor's duty, respecting 573
Council to make, with fire companies 553
engineers, duties of, respecting 622
lowest bidders, to receive, for City work (See Lowest Bidder)...978
penalty for evasion of certain provisions as to.....547
public work in relation to certain.....546
security for performance of 979
Spruce street contract, respecting, with P., W. & B. R. R. Co....257
of Street and Sewer Department.....234
void, when to be.....547
wages of City employees under certain.....547
of Water Department 179

CONVEYANCES

of real estate, registration of 105, 620

CORDERS AND MEASURERS OF WOOD AND BARK

appointment of 585
duties of 584, 586
fees of 584

CORNER LOTS

assessment of, for sewers 240

CORN FODDER (See Hay)

sales of, from wagons in streets, prohibited.....1012

CORN MEAL

regulations for sale of 953

CORONER

to report deaths within City limits to Registrar.....109

CORPORATE NAME AND POWERS OF CITY..... 28

COSTS

in Municipal Court and before City Judge.....39, 45, 47, 50, 51

COUNCIL

accounts of Street and Sewer Department to be audited by committee of 236
appeals from Surveyors and regulators, heard by.....133
appointments by Mayor to be confirmed by..... 36
appointment of committees by 53, 54, 607, 610-615
appropriations by (See Appropriations) 59
appropriations by, expenditures not to exceed head or item..... 75
extraordinary, when and how may be made by... 75
when and how paid 76
appropriations for improvement of navigation by (limited)..197-198
assessments laid before, when 91, 487
assessors and collectors in case of tie vote to be elected by 82, 412-413
assistant to Gas Inspector may be appointed by.....166
auctioneers may be licensed, taxed and regulated by.....56, 535, 954
auctioneers' licenses may be revoked by.....955
Auditor's veto may be overruled by..... 65
aye and nay vote of, when to be taken.....54, 57, 65, 76, 77
Bailiff of Council to be elected by.....157, 577
bills against City, duties of, as to.....957, 958
bills of Police Commissioners to be paid by.....216-217
bills, powers of, as to certain 958
births of children to be sent to Registrar by such person as may be named by 109
Board of Education, members of, cannot be members of the Board 427
Board of Education to present report of its accounts to, when...433
Board of Health may appoint additional officers, with approval of 771
Board of Health to submit certain reports to, when.....794
Building Inspector to be appointed by.....836
curb-stone markets, establishment and regulation of, by..56, 149, 155
curb-stone markets, spaces in to be allotted by, &c.....150-151
calamity to City Hall or Water Works gives power to, to borrow money 80

COUNCIL—(Continued)

Chief Engineer of Fire Department to report to.....630, 631, 632
Chief Engineer and assistants of Fire Department may be removed by 631
Chief and assistant engineers of Fire Department may be provided with horse and wagon by.....643
Chief Engineer and assistant engineers to be allowed a certain monthly allowance by 644
Chief Engineer and Surveyor to advise 619
chimney sweepers to obtain license from.....56, 626
clerk of Council and assessors' duties may be enlarged by.....93-94
clerk of Council to be elected by.....157, 566
clerk of market elected by.....157, 816
committees of and their appointment.....53, 54, 607, 610-615
committees of, not to consider bid for work without good bond..979
composition of 30, 52
contested elections, and duties of, as to (See p. 53) 413
contracts as to dogs, and powers of, in regard thereto.....978
corders and measurers of wood and bark appointed by.....585
drainage, powers and duties of, respecting (obsolete).....136
drains may be emptied into rivers by authority of (obsolete)....193
election certificates to be examined by.....412
election of members of 52, 405
election for officers to be appointed by, to be by ballot..... 54
Engineers and Surveyors elected by.....618
estimates of cost of work, to be reported to, by committees of...607
estimates of revenue and expenses, to be prepared by..... 74
exemptions of persons, from taxes by, not allowed.....103
extraordinary appropriations may be met by money borrowed from bank, by 76
fences around holes, may be required by two members of.....749
financial statement to be published by..... 74
Fire Department may be increased by.....629
free library and contract entered into by, for, when.....527
funded debt, money may be borrowed in excess of, by the, when 77-78
gunpowder and expenses of removal, when may be authorized by.963
Harbor Commissioners and their surveyors, to have their compensation fixed by 187
Harbor Commissioners' returns to be filed and recorded by.....187
harbor landmarks may be removed by, when.....193
Harbor Master elected by 199, 917
horse tax, manner of assessing, &c., may be fixed by....103, 104, 929
Inspectors and Measurers of Lumber, elected by.....591
Inspector of Meats elected by.....163
Inspector of Oils, elected by.....157, 588
investigation of City affairs, may be made by.....60-61

COUNCIL (Continued)
judge of election returns 53
legislative body of the City 55
liability of members of, for illegal debt 79
Mayor may be removed by 35
meetings of 53
members of, when and how elected 52, 405
money may be advanced to departments by, when 60
moving of member of, from wards 35, 405
Municipal Court expenses of a certain kind to be paid by 37
Municipal Court, place for holding of, to be provided by 37
navigation may be improved by borrowing money for that purpose, by 198
negotiable bonds may be issued by, when 78
oaths, when administered by members of 61
offensive trades may be permitted by the Mayor and Council 772
officers of, chosen by 53, 54, 607
ordinances of City, how passed by 54
ordinaces of City, how repealed by 54
organization of 53
Park Commissioners to report to 173
parks, condemnation and purchase of lands for, by 171
parks, money may be borrowed for purchase of, by 173
police pension fund, appropriation to, by 219
public parks, powers of, as to 169-170
pay-roll, duties of, as to 615-616
personal liability of members of, when 79
Police Commissioners may be removed by 206
police force may be increased with approval of, by resolution 210
Port Wardens, certain expenses of, to be paid by 198
Port Wardens to be elected by 193
powers of (general) 53-61
presidents of City departments are ex-officio members of 105
presidents of City departments may speak, but not vote, in 105
pumps and wells, may be supervised by (obsolete) 133
qualifications of members of 31
qualifications of members of, the, to be judge of 53
quorum of 54
railroad companies may be ordered by, to put gates at crossings 923
railway tracks, powers of, respecting (obsolete) 131
Registry Clerk, elected by 601
Registrar of Births, Deaths and Marriages, may be removed by 108
registration of births, deaths, &c., may be regulated by 110
reports to, by City Solicitor 574
reports to, by Auditor 569-570
reports to, by Clerk of Council 567
reports to, by Inspector of Oils 590

COUNCIL—(Continued)

reports to, by Treasurer 576
salary of Auditor's clerk, may be increased by....64, 65
salaries of all officers paid by, may be fixed by.... 60
salaries of committees of....610-614
salary for Deputy City Judge, to be provided, by.... 39
salary of Harbor Commissioner, fixed by....199
salaries of members of 68, 69, 608
salary of Plumbing Inspector to be approved by....156
salaries of police force may be increased, with approval of....210
salaries, powers of, as to 60, 69, 70
salary of Treasurer's clerk may be increased by.... 61
seal of City Judge, may be changed, and cost of paid by, when.. 50
shows, exhibitions, &c., may be regulated by....56, 522
sidings may be regulated by (obsolete)....132
sinking fund commissioners, elected by....456
sinking fund ordinances, to be passed by....457
special election for approval of ordinance to borrow money by..77-78
special meetings of 53
standards of weights and measures, to be provided by....814
statements to, by Treasurer....63, 575, 576
superintendent of crematory, when elected by (obsolete)....803
superintendent of fire alarm system, elected by (obsolete)....600
sureties on municipal official bonds must not be members of....607
streets, between curbs, may be paved by (obsolete)....119
streets may be extended, widened and laid out, by (obsolete)...111
Street and Sewer Directors may be removed by Mayor, with approval of 227
sureties on contractor's bonds, must not be members of....980
surveyors and regulators, appointed by....133
tax rate, fixed by 90, 91, 92
tax rate on rural and built up property, to be fixed by....487
terms of office, of members of.... 52
transfer of appropriation, when may be made by.... 75
underground pipes and wires, powers of, respecting....130
vacancies in office, to be filled by....35, 405, 412, 413, 607
vacancies in office of assessor and collector, to be filled by....94-95
vaccine physicians, to be appointed by 791
vote of, to borrow money 77
Water Commissioners may be removed, with the approval of....176
water course may be altered by (obsolete)....137
Weigh Masters elected by....586
wharves may be leased by....128, 919, 1033
wharf lines may be fixed by the purchase of land for that purpose, by 197

COURT OF GENERAL SESSIONS, &c., OF NEW CASTLE COUNTY
vacating of roads on application to....110

COURTS, YARDS OR ALLEYS
may be ordered paved by Board of Health....780

COWS (See Animals, Meats)

CREEKS (See Rivers)

CREMATORY
Board of Health has control and management of....138-139, 804
certain duties of committee, as to....804
garbage and waste of all kinds, may be taken to....798, 804
penalty for violating provisions of ordinance, relating to....804

CRUELTY TO ANIMALS
penalties for....971

CURBING (See Curb Stone)
by whom may be done....119-123, 1009
liens for....122, 1010
liens for, may be cancelled, when....246

CURB LINES
how obtained and fees for....622, 623, 1010

CURB STONE (See Curbing)
cement, concrete, to comprise composition of....1009, 1011
fixing of....119, 122, 123, 1011
rates for, may be liened against property....1010
regulation concerning height and size of....937-938, 1011

CURB STONE MARKETS (See Markets, Farmers' and Truckers' Market, Hucksters' Market, New Jersey Market, Fish Market, Fruit and Grain Market, Market Shed)
Acts relating to....149-155
Council has power to establish and regulate....149, 154
for farmers and truckers....149-150, 817, 832
for sale of fresh fish....154, 823
fruit, vegetable and grain....833
fruit, vegetable and produce....831
for hucksters....154, 820, 833
for sale of products of New Jersey....154, 819-820

CURB STONE MARKETS **(See Markets, Farmers' and Truckers' Market, Hucksters' Market, New Jersey Market, Fish Market, Fruit and Grain Market, Market Shed)**—(Continued)

ordinances and resolutions relating to.....814-835, 1012, 1013
penalty for violation of Acts relating to.....155
sale of Christmas trees 1013

D

"D" STREET

part of, removed from plan or map of City.....1063
width and location of 262

DAMAGES

assessment of, for vacating streets 110
opening streets 111-118
opening streets when not allowed.....113, 253
taking land for streets.....111
from holes, excavations and obstructions, who liable for.....124
from overhead bridge at Fourth street.....512
for altering water courses 137

DANGER SIGNALS

building material in streets must have.....1002, 1003, 1052
excavations in streets and sidewalks must have..949-950, 1002, 1052
lighting of 949-950, 1002
penalty for not maintaining 950, 1003
Street Commissioner's duty, as to.....950

DAY NURSERIES FOR BABIES

property of, exempt from taxation.....491

DEAD ANIMALS

casting of, into streets, prohibited.....773

DEAD BODIES

burial of, of persons dying from contagious diseases....785-786, 792
permits for disinterment of.....785, 792
bringing of, into City.....785, 792
burial and removal of 109, 785-786, 795
requirements as to depth of graves for.....805

DEATHS

record of **(See Registrar of Deaths, &c.)**.....108-109, 795

DEBT (See Bonds)

of City, publication of statement of..... 74
of City, when only to be increased.....77-78

DEDICATION

of streets contiguous to City, how made.....250-251

DEEDS

acknowledgment of before Judge of Municipal Court..... 52
Mayor..... 34
to City, duty of Solicitor respecting.....572, 573
registration of.....106
of purchasers at tax sales..... 98
for street beds not to be accepted unless street be graded and curbed and forty feet in width.....935, 1018

DELAWARE AVENUE (See Kennett Road)

buildings on, to be set back from building line.....905
frame buildings on, prohibited.....905
sidewalks of, widened.....905-906

DELAWARE FIRE COMPANY

authorized to sell engine and purchase truck, (obsolete).....634
location of.....628

DELAWARE INDUSTRIAL SCHOOL FOR GIRLS

a misdemeanor to aid girls to escape from.....534

DELAWARE RIVER (See Rivers)

wharves, piers and bulkhead lines on.....201

DEPARTMENT OF ELECTIONS (See Elections and Titles Therein Named).....329-341
appointment of members of.....329-330, 338, 339, 341
appointment of registration officers from City Executive Committee's list made by.....332
appointment of all registrars made by.....275, 332, 333, 337
Attorney General to be notified of violations of this Act by 301, 336
ballots for Board of Public Education election prepared by.....425
ballots for municipal elections prepared by.....402
ballots for special election (Referendum) prepared by.....416
ballot boxes for Board of Public Education election furnished by.....425
ballot boxes for municipal election (under Sec. 8, p. 401) furnished by.....Sec. 32, 385
ballot boxes special election (Referendum) furnished by.....416

DEPARTMENT OF ELECTIONS—(Continued)

Board of Public Education election.....425, 427, 429
appointment of inspectors at, made by Department, when..427
ballots for, prepared by Department.....425
ballot boxes for, furnished by Department.....425
books of registered voters used at City election delivered by Department at polling places for.....429
books, after election, returned to Department.....429
certificates of nomination for, sent to Department.....425
books, &c., for registration of voters furnished by.....273
books of registered voters for Board of Public Education election delivered at polling places by.....429
canvass of municipal election made by.....411
certificates of nominations for Board of Public Education sent to 425
certificate of nomination for municipal election filed with.....402
form of 402
certificate may be required by, if in doubt as to bona fide party 402
certificates of election sent to successful candidates by.....411
form of 412
certificate of appointment of registrars delivered by.....335
form of 335
Clerk of Peace to deliver to, voting books and registers, when....352
to give receipt to Department for voting books and and registers 355
clerks, &c., employed by.....274, 332, 401-402
compensation of, amount.....272.273, 331, 339, 399
how and when paid.....336, 339, 399, 406
device, symbol, and name of party, when selected by.....404
dispute as to, decided by.....403
division of City into election districts made by.....331, 351
duties and powers of, in general 273, 337, 369, 398
election and registration officers appointed and removed by 274, 275, 331, 332, 333, 337, 348, 401
extension of City limits, powers and duties in, of.....405

General Election 368-397
ballots for, to be delivered to election officers by Department 377
booths for, in Wilmington, furnished by Department.....369
duties of Department, in general, as to 337, 369
room for holding, in Wilmington, provided by Department 377, 369
ropes, &c., to be used at, in Wilmington, furnished by Department 369
voting place for, in Wilmington, selected by Department 337, 369
inspectors for Board Public Education election named by, when..427
inspectors for Wilmington appointed by 348

DEPARTMENT OF ELECTIONS—(Continued)

jurisdiction of 339
lead pencils or indelible black crayons to be furnished by 395
limit of expense for employees, &c., and how paid....274, 332, 402
members of, not to hold other office at same time....330
misconduct generally of members, penalty 296, 336

Municipal Election
ballots printed by Department for 402
canvass made by Department of 411
certificates delivered by Department to successful candidates at 411
form of 412
certificate demanded by Department if in doubt as to party at 402
clerks, &c., employed by Department for....401-402
compensation of Department for holding....272, 273, 399, 406
Department vested with powers, &c., of Clerk of Peace at...401
device, symbol and name of party, when selected by Department for 403-404
duties of Department, in general at 337, 398
election officers, &c., appointed, dismissed and substitutes named by Department for 331, 337, 401
extension of City limits, powers and duties of Department as to 405
limit of expense for 402
removals and transfers made by Department for....400
sittings by Department to make....400
revision of registration for, when and how made by Department 400
nominations for Board Public Education election certified to....425
number of members of 329, 338, 339
oath, or affirmation, of members of....330
office of, and how expense for same paid....336
organization of 331, 340
penalty for general misconduct of 296
penalty for neglect, &c., of Department to deliver "Voting Books" to inspectors of primary elections....359
penalty for false canvass, &c....294-295
place for holding elections, selected by....273, 337

Primary Election 341-368
ropes, chains, &c., to be furnished by Department for....362-363
voting books of qualified voters furnished by Department for.349
compared and corrected by Department for....350
obtained by Department from Clerk of Peace, when 352-353

DEPARTMENT OF ELECTIONS—(Continued)

qualifications of members of 330
quorum for transaction of business by.....340
Referendum election, ballots for, prepared by.....416
registrars appointed, dismissed and substitutes named by
274, 275, 331-332, 333, 335, 337, 401

Registration of Voters 272-328
appointment of registrars, registration and election officers by Department for 275, 332, 333, 337
Attorney General to be notified by Department of violations of this Act 301
books, oaths, certificates, &c., furnished by Department for..273
clerks, &c., employed by Department for.....274
limit of expense for 274
compensation of Department for 272-273
dismissal of officers and naming of substitutes by Department for 274, 335, 337
duties of Department, in general, as to.....273, 337
oaths administered by Department to officers for.....275
by Clerk of Peace to officers for...334, 335
officers for, examined by Department as to qualifications....275
penalty for false canvass, &c., by Department of.....294-295
penalty for general misconduct of Department as to.....296
warrants of Department for expenses of.....289
ropes, chains, &c., for general elections furnished by.....369
extended by Sec. 38, p. 387 to municipal elections 369
ropes, chains, &c., for primary elections furnished by.....362-363
rules for transaction of business, &c., may be made by.....340
successors to, how appointed 330
term of office of members of 330, 339, 341
vacancies in office of members of, how filled.....330
vacancies of registration and election officers filled by
274, 275, 331, 332, 333, 337
voting books of registered voters for Board Public Education furnished by 429
voting books of qualified voters for municipal elections (not provided for) .....Note a,-429
voting books of qualified voters for primary elections furnished by 349
said books to be compared and corrected by Department...350
said books obtained by Department from Clerk of Peace, when 352
said books redelivered by Department to Clerk of Peace, when 355

DEPARTMENT OF ENGINEERING AND SURVEYING
(See Engineering and Surveying Department)

DEPOSITS OF MONEY
by assessors and collectors of taxes and other officers.....986, 987
by City Auditor 571
by City Treasurer 63, 575
by Street and Sewer Department.....236, 1004
by Water Department 182

DEPUTY CLERK OF MUNICIPAL COURT
appointment of, to be in writing 39
bail may be taken by 39
clerk may appoint, when 39
powers of 39-40

DEPUTY CITY JUDGE
appointment of, when and how made..... 39
compensation of 39, 604
duties of 39

DETECTIVES
appointment and term of 160
powers, duties, salaries and oath of office of.....161
removal of, how made 161-162

DESCENTS
map of City relating to, of streets, &c.....129
ordinance relating to streets (ancient).....935
of streets, omitted (See Preface)

DICKINSON STREET (See Twelfth street)
name of, changed to Twelfth street 941, 942
width and location of.....940

DIPHTHERIA (See Contagious Diseases)

DIRT (See Ashes)

DISEASES (See Contagious Diseases, Board of Health)
powers of Council, respecting 55

DISORDERLY CONDUCT
on streets, prohibited 762

DISORDERLY HOUSES (See tippling houses)

definition of 750
keeping of, declared a nuisance 749-750
leases for, void 537
owner of who permits nuisance after notice, liable 537
penalty for keeping of 536, 749-750

DISPOSAL PLANT (Garbage)

City may purchase, when 802

DISTRAINT (See Assessors and Collectors)

for taxes 97

DISTRICTS

City divided into four, by Street and Sewer Department .. 1033, 1034

DOCKS (See Wharves)

DOCK STREET (See West Dock Street)

width and location of 941
vacation of part of 264, 266

DOCTORS (See Physicians)

DOGS

at large in parks, prohibited 1096
barking or howling, penalty for keeping 976
Council's powers respecting 56
fee for impounding 976
female, at large, when unlawful 977
impounding and killing of 975
Mayor to appoint dog catcher 975
Mayor may make contract for taking up unmuzzled 973, 977
muzzling of, when to be done 972
penalty for removing registration tag from 976
penalty for not registering 976
property in, when one has 548, 975
reclaiming of impounded, seized for not being registered 976
reclaiming impounded, seized for being at large unmuzzled 973
registration of, regulations as to 975-976
removing muzzle from, penalty for 974
right to seize dogs bitten by other dogs 973
unmuzzled, at large, may be impounded 972-973

DOG CATCHER (See Animals)

animals at large, duties of, as to.....747, 748
appointment of, by the Mayor 975
fees of 747, 748, 978
general duties of 975-976
office of, to be abolished, when 978
penalty for interfering with 977

DOORS

regulations of projections of, into streets.....760, 938

DOOR STEPS

penalty for spitting or placing filthy matter on.....762
regulations of, on Gilpin avenue.....256
part of Pennsylvania avenue 1017
regulation for erection of 1017

DRAINAGE

powers and duties of Council, respecting (obsolete).....136
Board of Health, as to 143
powers and duties of Street and Sewer Department as to
156, 224, 238, 248
of water on another's premises.....774

DRAIN LAYERS

(See Plumbers and Plumbing Rules and Regulations Street and Sewer Department)

DRIVERS

prohibited from driving at an immoderate gait.....745
prohibited from racing on streets 748
duties of, respecting approach of fire apparatus.....635
duties of, as to hose 628, 636
must hold reins, or be near teams.....746
must observe certain space between teams.....747
to keep to the right of the roadway.....745

DRIVING

regulations for, on streets 745, 746, 747, 748

DUNCAN AVENUE

vacated 271

DU PONT COMPANY

City authorized to indemnify, against loss for use of land near Rockford Tower 545

E

"E" STREET

part of, removed from plan or map of City.....1063

EIGHTH STREET PASSENGER R. R. COMPANY

Act relating to 504-508
condemnation of land, for use of.....506
motive power of 504
to pave and keep in repair between tracks and three feet on each side 506
penalty for damaging property of.....508
route of 505
Street and Sewer Department to have certain powers over.....508
streets on which tracks may not be laid by.....508, 509
track to be used by, kind of.....505
where may be built 505

ELECTION WARDS AND DISTRICTS.....72-74, 331, 351

ELECTIONS (See Registration of Voters, Primary Elections, Department of Elections, General Elections and Municipal Elections)

ELECTION DISTRICTS (See Elections)

ELECTRIC LIGHT POLES (See Poles)

electric light companies to pay tax on poles and wires used in streets 85

ELEVENTH STREET (See Elizabeth Street)

parts of, vacated 264, 945
extension of 263

ELIZABETH STREET (See Eleventh Street)

distance of, from Chestnut street.....942
extension of 941
name of, changed to Eleventh street.....941, 942
width of 934

ELLIOTT AVENUE

name of, changed to Concord avenue....1058

EMPLOYEES OF CITY

contracts involving, when to be void....547
not to work over eight hours on contract work....546
wages of, on public work....547

ENCROACHMENTS

on streets, &c., prohibited....934

ENGINEERING AND SURVEYING DEPARTMENT

(See Chief Engineer and Surveyor, Registration of Real Estate)
creation and regulation of....617-624
duties of, as to registration of real estate....105-106
election, terms and salaries of officers of....608-609, 618
fees of....622-624
officers of....617
pay-roll of....615, 616
registry clerk of....601

ENGINEERS IN CHARGE OF SEWERS

election, oaths, terms, salaries, bonds and duties of....1035

EPIDEMIC DISEASES **(See Contagious Diseases)**

ESTIMATES

of revenue and expenses....74

EVIDENCE

printed copies of ordinances and resolutions admissible....144

EXCAVATIONS

application to make, how made, &c....1047, 1048, 1049
barriers to be placed around....749, 1002, 1003
bonds of indemnity for **(See Indemnifying Bonds to City)**
centre stones to be left at a safe distance from....951
danger signals at....949, 1002, 1003, 1052
deposit of money to be made in case of, amount of....1004-1005
fences to be placed around **(See Fences)**
for gas pipes....519-520, 944
master plumbers licensed by Street and Sewer Department only
persons allowed to make....1046
exceptions....1047

EXCAVATIONS—(Continued)

penalties for violations of regulations, concerning....944
permits for making (See Permits)....1004, 1047, 1049
re-filling of....1004
regulations of, in sidewalks....944, 1006-1007, 1050-1051
regulations of, in streets....254, 944
responsibility for damages caused by....124, 1004, 1039
Street Commissioner's duties respecting....944
water pipes....1004
who may make....1046-1047

EXCAVATORS (See Cesspools)

of cesspools, licenses to....779

EXECUTIVE OFFICERS OF BOARD OF HEALTH
(See Board of Health)

appointment of....138, 770
fruits which are diseased or unripe, sale of, must not be allowed by....808
notices given by, in certain cases....773, 786
powers of....138, 770, 771, 773
privy well, ordered cleaned by, when....777
salaries of....604, 608, 771
slaughter houses to be inspected by....776

EXEMPTIONS (See Exemptions From Taxation)

EXEMPTIONS FROM TAXATION

Acts relating to....485-492
of cemeteries and churches....83
of certain property....83
of City bonds....104, 484
Council cannot release or grant....103
of day nurseries for babies....491
of fire companies' buildings....84
of homes for incurables....490
of homes for refuge for reformed women....490
of marsh and meadow land....488
of non-residents, as to motor vehicles....555
of park lands....170
of property used for settlement work....492
of public school houses....437, 486
of P., W. & B. R. R. Co.'s roadbed....523
of real estate of the State of Delaware....83
of real estate of New Castle County....83
of real estate of the City of Wilmington....83

EXEMPTIONS FROM TAXATION—(Continued)

of real estate of the United States....83, 485-486
from sewer assessments....243
of Wilmington Institute....526
of Young Women's Christian Association....491

EXHIBITION (See Shows)

EXPENDITURES BY COUNCIL

not to exceed head or item of appropriation.... 75

EXPENSE OF PERSONS IN CITY CELLS

by whom borne.... 71

EXTENSION OF CITY LIMITS (See Boundaries)

new election districts in....405
new streets and grades in....250-252

EXTRAORDINARY APPROPRIATIONS

in case of damage to City Hall.... 80
in case of damage to water works.... 80
ordinance for, how to be drawn, endorsed, passed.... 75
when lawful.... 75
how paid.... 76

F

FAME HOSE FIRE COMPANY (See Fire Companies)

location of....629

FARMERS' AND TRUCKERS' MARKET (See Curb Stone Markets)

allotment of spaces in....150, 151, 818, 819, 828, 830
certificate for spaces in....150, 1012
Clerk of Market's duties in....151, 814-815
establishment of, by Council....149, 817
fees for spaces in....150-151, 828, 831
limits of....149, 817-818
penalty for violations of law respecting....155
plans of spaces in....150, 818, 819, 828
regulations of sales of meat in....152, 819
what may be sold in....819

FEDERAL GOVERNMENT

appropriation by, for Christiana River 204

FEES

of assessors and collectors for tax certificates.....101
of auctioneers, for sales by 954-956
for building permits 622, 837, 839
for cess pools, permits for cleansing 788
of chimney sweepers 626
of Chief Engineer and Surveyor for wharf lines.....195
of City Judge 51
of City officers 70
of City Solicitor 51-52
of Clerk of Council for making copies.....566
of Clerk of Market 151, 816-817, 828, 831
of corders and measurers of wood and bark.....584
for dogs, when reclaimed 976
of Dog Catcher, as to animals at large.....747, 975
of engineers, surveyors and regulators.....195, 252, 622-624
for ferrules, (attachment of) 1079, 1083
for fruit and grain market 823
for geese, when re-claimed.....747
(as to fines, see 745)
for hucksters' stands 821
for Inspectors and Measurers of Lumber.....591
for Inspector of Oils 589
of Judge of Municipal Court 51-52
for licenses for shows 959-960
for market spaces 150-151, 821, 823
of Plumbing Inspector 592
of Recorder of Deeds 105, 106, 252
of Regulator of Weights, &c.....816-817
of Registrar of Deaths, &c.....796
of Sewers 239-240, 1038, 1048
for swine, (when impounded) 765
of streets (opening of) 1005
of Weigh Master 586-587
of weights and measures, (testing of) 816
of witnesses 47, 50, 51

FENCES (See Party Walls)

City surveyors and regulators to regulate partition.....135
cost of, may be recovered in Municipal Court 135
required around quarries, brick yards, excavations, &c. 749, 1002, 1003
regulations for erection of 859, 934

FENDERS AND WHEEL GUARDS
street railway cars must be equipped with....1024
must be approved by Street and Sewer Department....1025
to be kept in good repair....1026
penalty for not using, &c....1025, 1026
unlawful to operate car, unless equipped with....1026

FERRULES
detaching of....1080
fees for attaching....1083
by whom attached....1083
permits, what to state....1080-1083
may be detached for non-payment of water rent....1082
unlawful attachment of, penalty for....1079
size of, to be not less than ¾ in. in diameter....1085

FIFTEENTH STREET (See Stidham Street)
part of, vacated....264, 365, 948

FIFTH WARD
limits of, extended....21, 28

FINANCE COMMITTEE (See Committee on Finance)

FINANCIAL STATEMENT
publication of....74, 614, 987

FINES
how collected....51-52
Law and Order Society, when to receive....535
to be paid over to Treasurer....144
informers to receive one-half of certain....963, 972, 976, 977

FIRE ALARMS (See Fires, Fire Alarm System)
false, penalty for raising....626, 633
racing returning from fire, or false....626
special....642
system of responses to....638, 641

FIRE ALARM SYSTEM (See Fires, Fire Alarms)
advertisements posted on, prohibited....633, 994
control of....209
penalty for damage to....633
regulations of use of master key of....633
responses to alarms to new boxes of....642
system of....638-641

FIRE ARMS

discharge of, prohibited 751, 964

FIRE COMPANIES

(See Fires, Fire Alarms, Fire Alarm System, Fire Department)
amount of money to be paid by Council to.....554
buildings of, exempt from taxation 84
charges by, against Chief Engineer, &c.....628-629
committee on, appointment, number, and duty of.....610-611, 634
Council's committee on 610
duties of Chief Engineer and assistants as to.....629-630
drivers of vehicles as to 635
locomotive engineers as to 636
street car conductors as to 635
duties of, when out of service.....631
inspection of 610
minors prohibited from running with.....627
misconduct and suspension of 631
names and locations of 628-629
penalty as to possession of fire box keys without permission....633
penalty for driving over hose of.....628, 636
racing of, prohibited 626
refusal by, to respond to alarms, penalty 642
regulations of assembling of members of.....626
as to hose of 632
of use of apparatus by 626, 630, 631
requirements as to members, &c., of.....610-611
semi-annual tests of 627
system of responses to fire alarms by.....638-642

FIRE CRACKERS (See Fireworks)

prosecution against partnership or corporation for violation of ordinance relating to, how instituted.....965
selling, giving away or firing off of, unlawful.....751, 964-965
throwing lighted, at persons, animals, car or house, unlawful....965

FIRE DEPARTMENT (See Fires, Fire Alarm System, Fire Companies)

badges of 630, 631, 636, 637
control of 629
Council may make contracts with fire companies of the.....553-554
election of Chief Engineer and assistants of.....158-159
horse and wagon to be provided for Chief Engineer and assistants of 643
how increased 629
increase of 629, 637, 642, 644, 646
monthly allowance to be made to Chief Engineer and assistants

FIRE DEPARTMENT—(Continued)

of, for boarding, &c., of horse and carriage 644
salaries of Chief and assistant engineers of.....644
vacancies in office of Chief, &c., filled by company.....159-160
of what, consists 628

FIRE ESCAPES 879-880

FIRE HYDRANTS

care and control of 1075
injuries to, penalty 1081
penalty for obstructing use of.....1084
penalty for unlawful use of.....1080-1081, 1084
private, regulations for use of.....1083

FIRES (See Fire Alarms, Fire Department)

beyond City limits 630
in chimneys 625
false alarms of, penalty for raising.....626, 633
duties of drivers, as to apparatus going to.....635
street car conductors, as to same.....635
firemen and policemen at, duties of.....630, 637
hose injured at, penalty for.....628, 636
locomotive engineers, duties of, during certain.....636
ropes at 630, 637
racing from 626
in streets, prohibited 751

FIREWORKS

ordinances relating to 751, 964-965

FIRST ASSISTANT ENGINEER OF SURVEYING DEPARTMENT

salary of 602, 608

FISCAL CONCERNS

provisions of law, concerning 74-80

FISCAL YEAR

beginning of, Wilmington 74
of Street and Sewer Department, termination of.....1071

FISH (See Fish Market, Inspector of Meats)

offal or filth from, not to be thrown into gutters or streets.....823
unsound, sale of prohibited 805

FISH MARKET

Council may establish and regulate.....154
location and regulations of.....823

FLAG

of the United States to be displayed on or near school houses...450
of foreign country, when may be displayed on public buildings..535

FLAGS, BANNERS AND BUNTING

when allowed on streets 761

FLOATING DEBT (See Bonds)

FODDER (See Hay)

sales of, from wagons in streets, prohibited.....1012

FOOD (See Fruit, Meats)

FOOD ANIMALS (See Inspector of Meats)

FOOTWAYS (See Sidewalks)

FOREIGN FLAG (See Flag)

FOREMAN OF WATER DEPARTMENT

appointment and duties of 1077

FORFEITURES

to be paid into City Treasury (See Fines) 144
exceptions 535, 971

FORTY-FOOT STREET

location of 1057
name of, changed to Douglas street.....1057

FOUNDATIONS

regulations for building of 841, 843

FOUNTAINS

informer to receive certain fines as to.....971
public, penalty for injuring 970
duties of police as to 971

FOURTEENTH STREET (See Washington Street "Old")

part of, vacated 266
part of West, removed from plan or map of City 1063

FOURTH STREET (See High Street)

leasing of wharf at end of 920
part of, vacated 1060

FOWLS (See Poultry)

FRAME BUILDINGS

not to be moved in City limits 903
regulations for alterations to 860, 903
temporary, for use of builders 857-858

FRANCHISES OF STREET RAILWAY COMPANIES

forfeited in certain cases 1031

FRANKLIN STREET (Old) (See Thirteenth Street, Christiana Street)

name of, changed to Christiana street 941, 942, 947

FREE LIBRARY

Acts establishing and relating to 525, 531, 984, 985

FRENCH STREET

part of, vacated 267
width of 934

FRIENDSHIP FIRE COMPANY

location of 628

FRONT STREET (See Lancaster Avenue)

extension of 941
name of part of, changed to Lancaster avenue 1057
width of 933-934

FRONT AND UNION STREET RAILWAY COMPANY

acts, relating to 498-504
condemnation of land for 501
fare of, when not to exceed five cents 503
injuries to property of, and penalty therefor 503
motor power to be used by 499

FRONT AND UNION STREET RAILWAY COMPANY—(Continued)

paving and repairing, to be done by, within tracks and three feet on each side thereof 503
route of 499
Street and Sewer Department must give consent before streets may be used by 503
track and grades of 500-501, 504
tracks of railway and railroad companies may be crossed by.....501
track not to be laid on parts of Ninth and Tenth streets....508, 509
where railway may be built in, and out of, City.....498-499
Wilmington City Railway Co.'s track may be used by, when.499-500

FRUIT **(See Fruit and Grain Market)**

duties of Clerk of the Market and executive officers of Board of
sale of diseased or premature, prohibited.....808
Health as to 808

FRUIT AND GRAIN MARKET

location and regulation of.....821
sale of peaches, &c., in 821
space in, and charge for same 822
what may be sold in 821

FRUIT, VEGETABLE AND GRAIN MARKET

location of 833
market hours in 833
penalty for violating provisions, relating thereto.....835
powers of Clerk of Market, in.....835
shafts to be taken from wagons in street of.....833
spaces in 833-834
spaces in, not to be assigned or sub-letted.....834
use of, by whom 833
what to be sold in 833, 834

FRUIT, VEGETABLE AND PRODUCE MARKET SHED

location of 831
conditions under which persons may use.....832
persons allowed, and not allowed, to occupy the.....831
stalls in, not to be held or used by any one in particular.....832
Street and Sewer Department to have control of.....832

FUNDED DEBT

limitation of 77
may be exceeded, when 77-78
not be increased, when 80

G

"G" STREET

part of, vacated 267, 271

GAME

unsound, sale of, prohibited 805, 806

GARBAGE (See Board of Health)

advertisements for proposals respecting 139, 797, 801
alleys, not to be used to place, in 766
ashes not to be mixed with 798
badge to be worn by employees collecting 800
penalty for not wearing badge as aforesaid 800
bills, payment of, for collections of 800, 801
Board of Health to award garbage contracts 138-139
Board of Health to enforce provisions relating to 801
bonds with bids and contracts, respecting 800, 802
carts for collection of, to be marked "City Garbage Cart" 799
collection of, when to be made 798-799
collection and removal of 138-139, 796-797, 801
contractors, when paid for removal of 800-801
contracts as to, by whom made 138-139, 796-797, 801
contract for collection and removal of, to lowest and best bidder 138-139, 797
definition of 797, 802
deposit of, in streets, prohibited 758
districts, as to 798
lids of carts for collection of, to be kept closed 800
metal carts to be used for the collection of 799
penalty for not collecting 799
quantity of, allowed to each house 799
sewers, unlawful to throw, in 1053
where to be taken 798

GAS

Act regulating price of 519

GAS COMPANIES

to pay tax based on miles of streets in which pipes are laid 85

GAS INSPECTOR

assistant to, may be appointed by Council 166
bond of 166-167, 593
candle power of gas to be tested daily, by 166, 597
duties of 165-167, 593-598

GAS INSPECTOR—(Continued)

fees collected by, to be paid monthly to Treasurer.....598
meter of consumer to be tested by.....597
Plumbing Inspector to be.....165, 592
salary of.....166, 592

GAS PIPES

regulations for excavations for.....519-520, 944

GEESE (See Animals)

at large in streets, prohibited.....745, 747
fee for impounding.....747
impounding and sale of.....747-748
redemption of, when impounded.....747

GENERAL ELECTIONS

Act, relating to.....368-397
Act applies to municipal elections in Wilmington.....387, 414
Act does not apply to Board Public Education election in Wilmington.....387
appliances of room where election is held.....369
ballot boxes, furnished by Sheriff.....385
ballots, left over to be destroyed by Clerk of the Peace.....384
ballots, unused or unvoted, to be burned by officers.....384
ballots, arrangement of.....374
ballots, what not to be counted.....383, 388
ballots, counting of.....383, 388
ballots, defaced or mutilated.....382
ballots, what not to be deposited.....380
ballots, to whom delivered in Wilmington.....376
ballots, to whom delivered, if inspector does not call for same..376
ballots, disputed.....383
ballots, how folded.....391
ballots, folding of, changes of and erasures in.....380, 382
ballots, left over to be destroyed by Clerk of the Peace.....384
ballots, loss or destruction of.....377
ballots, number of, how ascertained.....375
ballots, opening of package of.....378
ballots, preparing of, voting, &c.....380
ballots, packages, &c.....375
ballots, penalty for making distinguishing marks on.....386
ballots, by whom printed, size, form, &c. 370-371, 373-374-375, 377, 388
ballots, printer of and regulations concerning.....375
ballots, penalty for breaking package containing.....377
ballots, penalty for removing.....382

GENERAL ELECTIONS—(Continued)

ballots, sample 378-379
ballots, no one to leave room with 381, 382
ballots, unused or unvoted to be burned by officers 384
ballots, how marked, in voting 380, 388, 394-395
betting on elections, unlawful 393
booths for 369
cards of instruction 378-379
certificates of nomination, when to be filed 373
certificates of nomination, for, form of, &c 371
certificates of nomination to be preserved by Clerk of the Peace 372
challengers, powers of 388-389
resisting, penalty for 389
act as clerks, &c 389
oath of and how appointed 389
change of place of holding, in time for notice to be given 368
challengers at 370
challengers, where to stand 370, 379
Clerk of the Peace to deliver sample ballots 378, 379, 384
conversation in polling places 382
death, resignation and removal of candidates 371
death, resignation and removal of candidates after printing of ballots 374
Department of Elections, duty as to 369
disputed ballots 383
distinguishing marks on ballots, penalty for 386
divisions and factions of parties at 371-372
elector may assist voter, when 387-388
elector assisting one to vote and disclosing manner of voting, penalty for 391
election officer disclosing how elector voted, penalty for 392
election officer committing unlawful act, penalty for 392
election room, penalty for unlawfully entering 386, 390
penalty for hiding in 392
election officers, penalty for inducing to violate provisions of this Act 386
election supplies, penalty for destroying 386
expenses and costs of inspectors and Clerk of Peace, how paid ... 387
figure or device of parties on ballots for 371
dispute as to, how settled 372
hiding in election room, penalty for 392
initials of clerks of election, where placed on ballots 378, 391
inspector, compensation and expenses of 385, 387
inspectors, duties of respecting ballots 376
inspector, oath and duty of 386
inspectors and clerks of election, duty of 378
intoxicating liquor, provisions relating to 273, 290, 397

GENERAL ELECTIONS (Continued)

lead pencil used to mark ballot at 380, 394, 395
misconduct of, general, of election officers.....385, 392
marked ballot not to be counted, what is.....388
new ballots, when election officers to print, &c.....377
nominations excluded from publication, what kind of.....373
nominations, publication of, for 373
arrangement of, for 373
organization of political parties, Clerk of Peace may demand proof of 370
oath of inspector 386
oath of election officers, nature of, &c.....383, 386
pasters for new nomination, how used.....374
pencil to be delivered to voter by clerk of elections.....395
pencil, penalty for removing from election room.....395
penalty for placing distinguishing mark on ballots.....386
penalty for unlawfully entering election room.....386, 390
penalty for election officers revealing knowledge of how one voted 384, 392
penalty for violations of this Act.....385, 392
penalty for destroying certificates of nomination.....385
penalty for destroying conveniences of voting place, &c.....386-387
penalty for neglect of Clerk of the Peace to perform certain duties 384
penalty for destroying election supplies.....386
persons betting, competent witnesses in regard thereto.....394
place of holding 273, 290, 368
police, duties of, at.....211, 298
political party, what shall constitute 370
"principal political parties," definition of 389
room of election, unlawfully entering and penalty therefor..386, 390
room where, is held, plan and entrance of.....368
sample ballots, furnished by Clerk of Peace.....378-379
Sheriff, duty of as to 385
special officer at election and how appointed 390
stakeholder of bet on election, competent witness in regard thereto 393
thirty feet from the polls, who allowed within that distance....379
voters' assistants, how appointed and duty of.....388, 396, 397
false declaration of, to voter.....397
when may assist voter 387, 396
voters, admission of, to election room.....379-380, 381
voter, must not leave room with ballot or pencil.....380, 381, 395
voters of, number of in room at one time.....381
voting, place of, selected by Department of Elections...337-338, 369
voting, manner of 380, 388, 394-395
voting, how to prepare ballots 380

GENERAL ELECTIONS—(Continued)

voting, time for 381
what elections the provisions of this Act apply to..... 387

GILPIN AVENUE

buildings on, how erected 256
change of curb lines of..... 255, 996
powers of Park Commissioners, respecting..... 256
railways on, prohibited 256
regulations of use of 255
tree fund transferred to Park Commissioners..... 996
width of sidewalks and roadways of, changed..... 997

GILPIN LANE

vacation of 265

GOATS (See Animals)

at large in streets, prohibited..... 745, 747

GOODWIN STREET

a part of, vacated 1067

GRADES

of ascents and descents of streets, omitted, by authority of the Council (See Preface)
duties of engineers and surveyors, respecting..... 619, 620
owners of property outside of City may change, with consent of Street and Sewer Department 254
charter provisions as to 130
of streets, how obtained 619, 620

GRADE CROSSINGS

bonds for abolition of..... 469, 477, 680, 682, 688, 690, 696, 699

GRAIN (See Fruit and Grain Market)

powers of Council, respecting 56

GRASS PLOTS

driving animals on, or permitting them to graze on, unlawful 995-996

GRAVEYARDS (See Cemeteries)

of African Union Church, burials in, prohibited..... 520

GRAVES (See Burials, Dead Bodies)

depth of, required 805

GUNS

firing of, prohibited 751, 964

GUNPOWDER

, Council may regulate storage of..... 56
duties of high constable, &c., respecting.....962-963
expense of removal of unlawful stores of.....963
informer, when to receive one-half the fines in regard to ordinance relating to 963
Judge of Municipal Court shall order removal of.....962
penalty for unlawful storing of.....962
penalty for not removing 962-963
regulation for storing and sale of.....962-964
regulation for bringing of, into City.....963
removal of, when unlawfully stored.....962
vessels of a certain kind, excepted from regulations respecting...963

GUTTERS (See Sewers, Streets)

by whom laid out and general powers as to.....127, 224, 228, 229
obstruction of, prohibited 788
throwing fish and offal in 823
width of, in ancient ordinance 937

H

HAND BILLS, CIRCULARS, &c.

placing of, on steps, porches, sidewalks, or in streets, unlawful...999

HAND CARTS (See Wheelbarrows)

HANOVER STREET (See Sixth Street)

extension of 941
name of, changed to Sixth street.....941, 942
width of 934

HARBOR (See Harbor Commissioners, Harbor Master, Port Wardens)

act, relating to 185-204
duties of Harbor Commissioners, respecting.....185-189
Harbor Master, respecting 199-200
Port Wardens, respecting 188-200

HARBOR COMMISSIONERS (See Port Wardens and Wharves)

appointment of 185
compensation of, to be fixed by Council.....187
duties of 185-189
land-marks may be fixed by 186
oath of office of 186
powers of 186
returns and plots to be made and filed by 187
returns and plots of, where recorded 187
salaries of engineers, &c., to be fixed by.....187
vacancies, how filled 187

HARBOR MASTER

election, powers and duties of.....199, 917
holds over in case of failure to elect.....917
penalty for refusal to obey.....199
salary of 200, 609, 917

HARTMAN STREET

part of, removed from plan or map of City.....1062

HASLET STREET (See Park Place)

name of part of, changed to Park Place.....1057
spelling of name of, changed 951
width and location of 950-951

HAWLEY STREET

part of, vacated 270

HAY (See Weigh Master)

duty of Street Commissioner, respecting 752
duties of Weigh Master as to weighing of.....586
fees for weighing 587
penalty for unloading of, before weighing 588
powers of Council, respecting 56
redemption of, by owner 753
regulations of weighing of 587
regulations for storing of 752
removal and sale of unlawful stores of.....752-753
sales of, from wagons in streets, prohibited.....1012

HEALTH (See Board of Health)

of City, powers of Council, respecting..... 55
ordinances, relating to 770-813

HEAT, LIGHT AND POWER COMPANIES

to pay tax on basis of miles of streets used for pipes, wires, poles, &c. 84-87

HIGH CONSTABLE

accounts to be rendered by, to Auditor 570
accused persons to be placed in custody of 45, 49
additional compensation, when 210
appointment of 209
a City officer 30
commitments to, of defendants, when 49
contempt of court by, when 44
dogs, duties of, as to reclaimed 976
dogs, duties of, as to registration of 975
duties of, at Municipal Court, and generally 44, 49, 67, 211
gunpowder, duties of, as to 962-963
impounded swine, duties of, as to 765
not to be member of political committee, &c 211
obscene figures and pictures to be removed by, when 763
officer of Board of Health 770
oils, duties of, as to storage of 966
penalty for failure to serve legal process 44
prison cells, duties of, as to 71
process to be served by 44
is Secretary of Police Commission 207
removal of 209, 211, 212
salary of 210
suspension of 44, 212
tar, duties of, as to manufacture of 967
witness fees not to be paid to 50

HIGH STREET (See Fourth Street)

extension of 941
name of, changed to Fourth street 941-942
width of 933
width of sidewalk of 937

HITCHING OF HORSES TO TREES UNLAWFUL 969

HOGS (See Cattle, Meat, Swine)

powers of Council, respecting 56

HOG PENS

cleansing and removal of 776
regulations for building of 765-766

HOLES (See Excavations)

liability for damages caused by.....124
in sidewalks.....944, 1006-1007
in streets.....130, 246, 254, 519, 520, 944

HOME FOR INCURABLES

exemption of, from taxation.....490

HORSES (See Animals)

at large, in public parks, prohibited.....1095, 1096
at large, in streets, prohibited.....745, 747
hitching of, to trees, a nuisance.....969
impounding of, when hitched to trees.....969
penalty for owners of, concealing, to evade tax on.....930
regulations for driving of.....745, 746, 748
taxes on, how assessed and collected.....103, 929-930
appeal to Finance Committee as to tax on.....930
troughs for, regulation of, by Water Department.....1084

HOSE (See Fire Companies)

penalty for driving over.....628, 636

HOSPITAL (See City Hospital)

when Board of Health may establish.....779, 780

HOUSES (See Disorderly Houses, Tippling Houses)

by whom, and how numbered.....578-583
when unlawful to change numbers of.....289

HOUSEHOLD RUBBISH

in what to be placed, and by whom removed.....894, 998
not to be mixed with ashes.....998
placing of, in streets prohibited.....999, 1002

HOUSES OF ILL FAME (See Assignation Houses)

keeping of, a nuisance.....536, 759
penalty for keeping.....536, 759

HOUSE SERGEANT

bail may be taken by, when Clerk of Municipal Court is absent..164
warrants may be served and oath administered by, when Clerk of Municipal Court is absent.....163

HUCKSTERS (See Hucksters' Market)

HUCKSTERS' MARKET (See Curb Stone Markets)

Council may establish and regulate.....154
fees paid to Clerk of Market for use of.....821
location and regulations of 820
space in 821
What may be sold in 821

HYDRANTS (See Fire Hydrants)

I

ICE

regulations of sale of 953

ILLUMINATING OILS AND FLUIDS (See Oils)

IMAGES (Exhibition of)

license fee for 959

IMPOUNDING

of animals at large 747, 765, 975

IMPRISONMENT (See Municipal Court)

for non-payment of taxes 99

INCURABLES

homes for, exempt from taxation 490

INDECENT CONDUCT

masquerading prohibited, except in certain cases 757-758
in public, prohibited 757, 762

INDECENT PICTURES

prohibited in public 762
removal of, by chief of police.....763

INDEMNIFYING BONDS TO CITY

when building materials are placed on sidewalks or streets 130, 244, 1002
when excavations are made in streets.....130, 244, 1004
from plumbers 1039, 1052

INDEPENDENCE FIRE COMPANY

location of 629, 645
made a member of the Fire Department.....645

INFECTIOUS DISEASES (See Contagious Diseases)

INFORMATION

in Municipal Court, prosecution shall be by..... 46

INITIATIVE AND REFERENDUM ACT.....415

duties of certain City officers under.....987-988

INSPECTIONS

of buildings (See Building Regulations).....836
cattle (See Inspector of Meats).....162
cesspools (See Plumbing Inspector).....155
meats (See Inspector of Meats) 162
milk, powers of Council, respecting..... 56
provisions, powers of Council, respecting..... 56
lumber (See Inspectors and Measurers of Lumber).....591
lumber, powers of Council, respecting..... 56
markets (See Clerk of Market).....827
oils (See Inspector of Oil).....589
plumbing and drainage (See Plumbing Inspector and Plumbing Regulations) 156, 1036

INSPECTORS OF ELECTION (See Elections)

INSPECTORS AND MEASURERS OF LUMBER

appointment and duties of 591
oath, fees and qualifications of.....591
powers of Council, respecting 56, 607

INSPECTOR OF MEATS (See Meats)

duties of, as to unsound meat.....807
election, term and salary of.....163
food animals, &c., to be inspected by.....807
to obey orders of, and report to Board of Health.....807
penalty for interfering with 808
qualifications, duties and powers of.....162
slaughter houses, &c., to be inspected by.....807
vacancy in office of 163, 607

INSPECTOR OF OILS (See Oils)

duties of 589-590
election, term and salary of.....157-158, 588
fees of 589
reports of 590
seal or mark of 589
vacancy in office of 607

INTEREST

rate of, on sinking fund bonds, how fixed.....458

INTERMENTS (See Burials)

INTOXICATING LIQUORS

sale of, in public parks, prohibited.....173
use and sale of, as to elections.....273, 290, 318, 358, 359, 368, 397

INVESTIGATIONS OF AFFAIRS OF THE CITY

by "The Council" 60-61
by the Mayor 33

J

JANITOR

appointment, duties and salary of.....600
of Municipal Court room and police station.....600

JEFFERSON STREET

width and location of 940
part of, vacated 1065

JOURNAL

of Council, to be kept..... 53
entries in 36, 53-54, 57, 76, 176, 206, 227

JUDGE OF MUNICIPAL COURT

absence of, deputy may act when requested..... 39
acknowledgments of deeds, mortgages, &c., may be taken by.... 52
appointment of 36
appointment of new clerk by, if bond be not given by first appointee 47
bond of Clerk of Court to be approved by..... 47
Clerk of Court to be appointed by..... 47

JUDGE OF MUNICIPAL COURT—(Continued)

costs may be stricken off by, when 45
fees of 50, 51, 52
gunpowder, unlawfully stored may be ordered removed by...962-963
lottery policy offices, duty of, as to.....970
oath of office, to be taken by..... 36
oath of office, may be administered by..... 32
powers and jurisdiction of 43
qualifications and term of office of..... 36
removal of 36
salary of 68, 608
seals for Court and Judge, to be procured by..... 50
tar, duty of, as to the making of.....967
warrant of, for abatement of nuisance.....785
warrant for witness fee in Municipal Court to be signed by..... 50

JUDGMENTS

entry of, for taxes 98
in Municipal Court, appeals from (See Certiorari).....48, 49

JUGGLING (See Shows)

JUSTICE OF THE PEACE

to bind accused persons for appearance at Municipal Court..40-41, 45

JUSTISON STREET

width of 934

K

KENNETT ROAD (See Delaware Avenue)

part of, to be called Delaware avenue.....943

KENNETT TURNPIKE ROAD

part of, vacated 265

KENT STREET (See Eighth Street)

extension of 941
name of, changed to Eighth street 941, 942
width of 934

KEROSENE (See Oils)

KEYS

to fire alarm system, regulation of 633

KING'S ROAD

vacation of 265

KING STREET (See Curb Stone Markets)

part of, vacated 267
sidewalks of 937
width of 934, 948

KIRKWOOD PARK

Park Commissioners authorized to purchase lands for.....983

KIRKWOOD PARK BATH HOUSE

ordinance for issuance of bonds for 718

L

LABELS

for names of streets 943
penalty for removing 943

LAMBS

when unlawful to sell or ship into City, carcasses of.....164, 165

LAMBSON STREET

part of removed from plan or map of City.....1063

LAMPS (See Public Lamps)

LANCASTER AVENUE (See Front Street)

LANDMARKS

Council may authorize removal of 193
Harbor Commissioners powers of, as to.....186
removal of, unlawful 111, 622
Port Wardens powers of, as to 188
of streets 111
for wharf lines 186

LAND OUTSIDE OF CITY

damages not allowed for, when 253
grades of, may be fixed by owner 253
powers of Street and Sewer Department in regard to.....253-254

LANES (See Alleys, Streets)

LARD (See Butter)

LAW COMMITTEE (See Committees of Council)

duties of 614

LAW AND ORDER SOCIETY

when entitled to one-half of certain fines, &c.....535-536

LEASES

of certain lands for armory.....924, 925
of property to be used as disorderly houses.....537
to P., W. & B. R. R. Co., by City.....523
of wharves 128, 919-920, 1033

LEGAL DAY'S WORK

what to constitute in certain work for employees of City.....546

LEGISLATIVE COMMITTEE (See Law Committee)

LIBERTY FIRE COMPANY

location of 629, 637, 638

LICENSES (See Shows)

for auctioneers, fees for 955, 956
issuing of 56, 535, 954
penalty for sale without.....956
powers under 955
revocation of, by Council, when.....955
to drain layers, &c. 244
fees for show licenses 522, 959, 960
penalty for shows without 959, 960
for pool rooms, bowling alleys, billiard tables, &c.....553
must have, for shows 751

LIENS

of assessment, benefits of opening streets.....115-116
assessment for paving and curbing.....119, 121-122, 1010

LIENS—(Continued)

books for, and duties of Auditor, respecting.....569
books for, and duties of Clerk of Council, respecting (obsolete)..567
cancellation of, by Board of Directors of the Street and Sewer Department for curbing, paving and sewer liens, when allowed 246
exemption of certain land, from sewer lien 243
for abating nuisances 139
for paving, how collected 120
repaving footways 121-124
for sewer assessments 239-240
for sewer assessments to be paid before connection can be made 1049
for sewers, cost of 241
for sewers, how collected 242
of taxes 95, 96, 98
for water courses, cost of altering (obsolete).....137

LIGHTING STREETS

duties and powers of Council, respecting..... 56

LIME

Council may regulate the weighing and measuring of..... 56

LIMITS OF CITY **(See Boundaries)**

LINEMEN

appointment of 601

LINWOOD AVENUE

part of, vacated 1070

LITERARY ENTERTAINMENT **(See Shows)**

no license to be required for.....959

LITTORAL PROPRIETORS

bulkheads may be erected by.....202
breadth of water front on Delaware River, of.....203
grants to, by Attorney General and Secretary of State, when.202-203
land to vest in fee in 202
wharves, &c., on Delaware River, may be owned by.....203

LOBDELL STREET

removal of part of from plan or map of City.....1061

LOCOMOTIVES

bells of, to be rung 755
engineers of, not to run over fire hoses..... 636
penalty for unlawful speed of 754
speed of 754
street crossings not to be blocked by..... 756

LOCUST STREET

part of, removed from plan or map of City..... 1061

LOMBARD STREET

width and location of 940

LOMBARDY TREES

planting of, prohibited 995

LOTTERY POLICIES

duties of police, respecting..... 970
offices for sale of, declared to be a nuisance..... 970
penalty for having place for sale of..... 970

LOTS (See Sand Lots)

of sand and gravel to be enclosed..... 749

LOVE LANE

act, vacating 264

LOWEST BIDDER

general work or labor for City over fifty dollars, to be awarded to 978
for Board of Public Education 438

LOWEST AND BEST BIDDER

as to Board of Health 139, 796
Street and Sewer Department 234
Water Department 179

LUMBER

power of Council concerning inspecting and measuring of..... 56
regulations for inspecting and measuring 591

MADISON STREET (See Curb Stone Markets)

parts of, vacated 262, 264, 946
width and location of 940

M

MAGISTRATES

to report marriages 109, 795
their names and residences to be reported to Registrar.....794

MALIGNANT DISEASES (See Contagious Diseases)

MAP

new streets less than forty feet in width not to be placed on....935
of bulkheads on Delaware River.....201
of City, how made 129, 620
pier lines of Delaware River to be as on a certain.....201
removal of certain streets from.....1061-1071

MARKETS

(See Curb Stone Markets, Regulator of Weights and Measures)
booths, &c., provisions concerning, not applicable to.....744
butter, sausage, &c., regulations of sales of, in.....825
Christmas trees, sales of, in 1013
Clerk of Market's duties in 827, 828, 830, 1012
Council's powers, respecting (See Street and Sewer Department)
56, 149, 150, 151
disorders and riots, in, how suppressed 828
houses for, powers of Council, respecting..... 56
hucksters 154, 820
farmers and truckers 149-150, 817, 832
fees from, to whom paid 829
fish 154, 823
Front and Church streets, regulations of.....831
fruit, vegetable and grain 833
fruit, vegetable and produce 831
New Jersey 154, 819, 820
ordinances relating to 817-835
oleomargarine, &c., regulations of sales of, in.....825, 827
refuse must not be thrown in, by sellers.....824-825
spaces in, allotted by Council.....150
record of same kept by Clerk of Market.....151
Street and Sewer Department, powers as to.....828
weights and measures, used in, regulations of.....815-817, 825

MARKET HOUSES

Council's powers as to 56
inspection of 807
offal or offensive matter in.....773

MARKET SHEDS

Front street wharf, regulation of 831-832

MARKET STREET (See Philadelphia Turnpike)

width of 934

MARRIAGES

Mayor may solemnize 34
records of 108-109, 796
reports of, to Registrar 109, 795

MARSH LAND

assessment of certain, for care of banks 521
exemption of, from taxation 488-489

MARSH ROAD (See Vandever Avenue, Seventh Street)

name of, in Ninth ward, changed to Vandever avenue 262
part of, vacated 265

MARSH STREET (See Seventh Street)

made public 933

MARSH TAX

how assessed and collected 521

MARYLAND AVENUE

act relating to 265
corner of sidewalk of, thrown into street 1055

MASKS (See Masquerading)

MASQUERADING

when permitted 758
when prohibited 757

MASTER KEYS

of fire alarm boxes, regulations for use of 633

MASTER WARDEN

election and duties of 194
compensation of 196
vacancy in office of, how filled 194

MATRONS (See Police Matrons)

of Police Department 215
may participate in police pension fund.....220

MAYOR

appeal to, from decision of Public Building Committee.....840-841
assemblages of minors to be dispersed by.....751
absence of, who to act 34
appraisers of impounded animals to be appointed by.....748
appointments by, to be confirmed by Council, when..... 36
Board of Health, appointed by 137, 770
members of, removed by Mayor.....138
vacancies in, filled by Mayor.....138, 770
bonds of assessors and collectors, to be approved by.....102
bonds of engineers and surveyors to be approved by.....618
bonds of garbage collectors, to be approved by.....800
City map, to be signed by 129
a City officer 30
a conservator of the peace 33
contracts may be made and revoked by, for the taking up of unmuzzled dogs 973, 977, 978
contract with Wilmington Institute may be made by.....984
deeds, &c., may be acknowledged by 34
dog catcher to be appointed by .....?.....975
duties and power of, in general..... 33
election of 32
elections, duty of, as to 410
gunpowder, duties of, as to 964
impounded swine, duties of, as to 765
investigation of City matters may be made by the..... 33
Council to pay expense of investigation made by..... 33
false statement under oath, made to the, in said investigation, is perjury 33
subpoenas may be issued and testimony under oath taken by, in said investigation 33
law and ordinances to be enforced by..... 33
licenses for shows, &c., issued by.....959, 960
a manager of free library 525
a member of Park Commission 168
marriages may be solemnized by 34
moving picture shows, Building Inspector's certificate to.....961
oath to Harbor Commissioners, administered by.....186
oath to Inspectors and Measurers of Lumber administered by....591
oath to Port Wardens, administered by.....194
oath to Weigh Master, administered by.....586
offensive trades, duty of, as to.....772

MAYOR—(Continued)

oil, duties of, as to storage of....966
ordinances to be approved by 57
police force and powers of, as to 67
posse comitatus, when may summon.... 67
presiding officer of Advisory Board 105
pro tempore 34
qualifications, election, term of office of....31-32
removal of, from office 35
riots, &c., duties of, as to 67
salary of 32, 68, 608
seal of city to be kept by.... 33
seal of office of 35
secretary of 604
shows, may be licensed by 959
special constables may be appointed by, when.... 67
Street and Sewer Directors, appointed and removed by....227
tar, pitch, &c., duties of, as to....967
vacancy in office of, how filled 35
veto power of 57, 77, 78
warrant to collect sewer liens, signed by....140, 242
Water Commissioners appointed by 175
Water Commissioners may be removed by....176
wheelbarrows, duties of, as to 758

MEASURES (See Weights and Measures)

MEASURERS OF LUMBER (See Inspectors and Measurers of Lumber)

MEASURERS OF WOOD AND BARK (See Corders of Wood and Bark)

MEATS (See Inspector of Meats)

blocks, for cutting of, prohibited on sidewalks....826
disposal of, when condemned 806
inspection of 162, 807
prima facie evidence of sale of 805
regulations for sale of, in Farmers' and Truckers' Market 152, 819, 826
sale of unsound, unlawful 805
seizure and condemnation of 162, 806
unwholesome, what is 805

MEETINGS

in public parks, regulations of....173

MENAGERIES (See Shows)

license fee, for 959

MIDWIVES

to report births 109, 794
to report their names and residences 794

MILITIA

erection of armory, for 924

MILK

adulterated, sale of, prohibited.....810
Council's powers, respecting 56
penalty for removing cream from milk and selling as pure.....811
penalty for selling, in unclean containers 811
penalty for selling from unclean cans.....811
penalty for violation of provisions of ordinance.....809, 810, 812
permits for sale of, not to be granted without certificate of veterinarian 809
permits for sale of, to be yearly.....809
persons selling, to have name on wagons 812
persons selling, to register with Clerk of Council.....809
standard measure of cream and 552
vessels containing skimmed, must be so marked.....811

MILK CANS

to be inspected by regulator of weights and measures of New Castle County 552

MILK INSPECTOR

allowance to, for horse and carriage 812
duties of 809-813
election of 809
implements for inspection of milk must be bought by.....813
salary of 812
vacancy in office of, how filled.....607

MILL STREET (See Sixteenth Street)

extension of 941
name of, changed to Sixteenth street 941, 947

MILLER LANE

vacation of 265

MILLER STREET

name of, changed to Broome street....1059

MINORS

assembling of, in streets, unlawful, when....751
taxes of, how collected 97
unlawful for minors to get on moving cars....922
unlawful to sell, give, &c., pistol or firearms, to....965

MINSTRELS (See Shows)

MONEY (See Deposits of Money)

how drawn from banks 63, 76, 987
borrowing of 76
may borrow, in excess of funded debt, when....77-78
limit for borrowing 77

MONROE STREET

extension of 263
parts of, vacated 262, 945, 1065

MOROCCO SHOPS

unlawful to throw refuse from, into sewers....1053

MORTGAGES

acknowledgments of, may be taken by Judge of Municipal Court 52
may be taken by Mayor....34

MOTOR VEHICLES

act, relating to 554
arrest of operators of, without warrant, when 560
chains on, when prohibited 558
definition of 561
fee for registration of, and tags on 554-555
intoxicated person, not to operate, penalty for so doing....557
license for, and to whom, granted, &c....556, 557
license necessary, in order to operate 555
money or valuables may be taken by magistrate from operators of, when 560
owners of, to register 554
non-residents using, exemptions of from Act....555
penalty for violating provisions relating to....560-561
police officer's signal to stop, must be obeyed by....560

MOTOR VEHICLES—(Continued)

provisions of this act, relating to, not to apply to certain persons operating 559
rate of speed of 559
registration of 554
right side of the road, to be followed by operators of.....559
revenue for registration and licensing from, to whom paid.....562
signals and brakes of, must be satisfactory.....557
warning of approach of, to be given by persons operating.....558

MOVING PICTURE SHOWS

age of operator of 961
certificate of Building Inspector as to building used for.....961
license required to operate 960
license for 960
license for, granted by Mayor 960
oil lamps, fire extinguishers, &c., used in 961
penalty for violating provisions of act relating to.....962
powers of Police Commissioners, as to 962
terms of license 960

MOUNTEBANKS (See Shows)

MULES (See Animals, Horses)

MUNICIPAL COURT

appeals from, when and how allowed 48, 49
bail in 39
bail bonds forwarded from Justice of the Peace to Municipal Court 45
certiorari, writs of, to 48
City Solicitor's duties in 46, 573
commitments by 49
contempt of, by constable how punished..... 44
duty of, as to certain nuisances 48-49
establishment of 36
expenses of, how paid 37
fees and costs in 40, 45, 46, 47, 50, 51, 52
filing of transcript, form of, &c..... 49
janitor (appointment of, for room) 600
jurisdiction of 40, 562
Justice of the Peace, and City Judge, to bind for appearance at.41, 45
peddlers, jurisdiction of, as to 562
process of 39
process of, runs throughout the State 40
prosecutor in, who 46, 66, 573

MUNICIPAL COURT—(Continued)

prosecutions in, how brought 44, 46
recognizances in 48, 49
seal of 50
surety fixed by, in appeals 49
terms and sessions of 36, 37
where held 37
witness fees in 47, 50, 51
witness fees, unclaimed in 48

MUNICIPAL ELECTIONS (Act Relating to) 397-414

ballots for, duty of printer as to 407
ballots, when and how counted 408
ballots to be destroyed after they have been counted, &c., unless. 408
ballot boxes, &c., how provided 407
ballots for, printed and furnished by Department of Elections... 402
canvass by votes by Department of Elections 411
canvass of votes, how conducted 407-408
certificates to persons elected, form and delivery of 411-412
City officers (certain of them) to remain at their offices during election day 409-410
Department of Elections, books, papers, &c., transfer of, to 399
contested elections, proceedings in and how decided 413-414
corporation not dissolved by failure to hold 406
Council's powers in election contests 413
Council to examine certificates 412
certificates to be examined by Council 412
Council (members of) how chosen 405
removal of member from ward, effect of 405
Department of Elections, may demand certificate of sufficiency as to party organization, when 402
Department of Elections, may employ clerks, &c 402
expenses, how paid 402
limit of expense 402
Department of Elections, compensation of 399
Department of Elections, powers of 398-404
Department of Elections, have power in City elections similar to those of the Clerk of the Peace in general elections in Wilmington 401
Department of Elections, salary of and how paid, for holding City elections 273, 399
Department of Elections, duties of as to revision of registration. 400
Department of Elections may dismiss election officers 401
Department of Elections, may lay out new districts in extended limits of city and appoint officers therein 405
devices of a certain kind prohibited 403

MUNICIPAL ELECTIONS (Act Relating to)—(Continued)

device, which faction entitled to....404
disputed ballots, what done with....408
domicile, change of, effect on right to vote....404
election districts in....399
election contest, decision and publication of....413
election contests, powers of Council as to....413
election to be by ballot and plurality elects....406
election (failure to hold) not to dissolve corporation....406
election officers may be dismissed by Department of Elections..401
expense of registration and election, all to be paid by City....406
factions, which entitled to device....404
general election laws applicable to, in Wilmington....387, 398, 414
hours of voting....406
how conducted....397-398
impersonation of voter, penalty for....401
legally qualified elector not disqualified by impersonation of himself....401
nominations, certificates of....402
party title, device, &c., use of....403
pasters for ballots, when and how used....407
police, duties of, at....211, 298
political party, what constitutes....402
poll lists, how certified and where filed....410
provisions of this Act not to apply to elections held for members of Board of Education....414
registration laws applicable to, in Wilmington....398
revision of registration by Department of Elections, when....400
returned certificates of election....408-410
statements and tallies, delivery of....409
supplemental certificates in case of death or removal subsequent to nomination....403
statements and tallies, delivery of....409
tallies, to whom directed....409
tie vote, how decided....412-413
time of holding, first Saturday in June, every second year 32, 52, 61, 81
vacancies among candidates at, after printing of ballots, how filled....406
vote, proclamation of result of, by inspectors....408
voting (hours of)....406
voters, qualifications of....404
voters, number of, allowed to witness canvass of vote at....408

N

NAMES OF STREETS

list of old 941-942
when unlawful to change 289

NAPTHA (See Oils)

NAVIGATION

(See Harbor Commissioners, Harbor Masters, Port Wardens)
ordinances, relating to 915-918
Harbor Master, duties of, respecting 199-200, 917-918
land taken for improvement of 197
obstructions to, removal of by Port Wardens 197
obstructions of, by vessels at anchor 915, 916

NEGRO CONCERT

license fee for exhibition of 959

NECROMANCY (Exhibition of)

license fee, for 959

NEW CASTLE COUNTY

property of, exempt from taxation 83

NEW JERSEY MARKET (See Curb Stone Market, Markets)

Council may establish and regulate 154
days and hours for 820
limits of 819
regulations for 820
space allowed in 820
who to use 820

NEWSPAPERS, &c.

with indecent words therein, prohibited 762

NIGHT SOIL (See Cesspools, Excavators)
license to excavators 779
regulations for removal of 779

NINETEENTH STREET

course of, changed 258
width of, changed 258

NINTH STREET (See Wood Street)

no railway or railroad track to be laid on part of.....508
part of, widened 948

NINTH WARD

limits of, extended 24

NOISES

loud and offensive, prohibited.....762
unnecessary, caused by street railway cars, unlawful.....1029-1030

NON-RESIDENTS

taxes of, how collected 98-99

NUISANCES

anchoring of vessels in Christiana.....915, 917
alleys, powers of Board of Health as to.....143
ashes, garbage, &c., placed in alleys.....776
ashes, garbage, &c., placed in streets, are.....758, 773, 999
Board of Health may abate and remove.....138, 143, 771
burials at less than a certain depth 805
cellars that have water in them, are.....788
cellars that are offensive 788
cesspools or wells, not water tight within 150 feet of Brandywine Creek 980
Council may define and remove 55
cruelty to animals 972
dead bodies, disinterment and removal of 785, 792
discharging ballast into the Christiana or Brandywine.....916
draining water or noisome matter upon premises of another....774
establishments for opium smoking 767
fireworks which are kept, given away, sold or fired off.....964, 965
geese at large, (See 745) 747
gutters that are obstructed 788
hand bills, circulars, &c., on steps, porches, sidewalks or streets..994
hog pens in filthy state 776
hog pens, within 50 feet of a dwelling house, declared to be.....766
horses and other animals at large 747
horses hitched to trees 969
houses of ill fame or assignation.....536, 759
indecent or disorderly conduct on streets 762
liens for abating 139
lottery policy offices 970
lounging on sidewalk 761
night soil, deposits of 779

NUISANCES—(Continued)

obstruction to navigation, when declared to be....915
obscene pictures, posting of....762
offensive premises....774
offensive trades....775-776
oils of a certain kind which are mixed or kept for sale....588
ordinances, relating to....742-769
oyster cellars which are offensive....776
penalty for refusing to abate....771-772
petroleum or other oils, stored away, when....966
port wardens to abate, when....190
privy wells, powers of Board of Health as to....141
privy wells in cellars....786
privy wells cleaned in July and August without a permit....788
privy wells that are overfull and offensive....777
proceedings against, when property right claimed....48-49
public lamps, obstruction of light of....968
sidewalks which are defective....1006-1007
signs, awnings, bulk windows, &c., when....760, 1015, 1016
signs, show bills and advertisements on trees or poles....994
skins in offensive state....773
slaughter houses (noisome)....775
slaughter houses, erection of....774-775
slaughter house contents, &c., which are cast into streets....773
slaughter houses, violations respecting regulations of....789
stallions, exhibited upon the streets or alleys of the City declared to be....520, 749
in streets to be abated by Board of Health....143
street railway cars making unnecessary noises in operation 1029-1030
swine at large....764
tar, manufacture or boiling of....966-967
tippling or disorderly houses, are....749-750
unlawful occupation of street by owner of carriage, &c....953
unlicensed shows, &c....751
water in cellars (stagnant)....773, 788
water in excavations (stagnant)....774
weeds on vacant lots, are....786
wheelbarrows on sidewalk....763

NUMBERS

of houses, system of....578-583
when unlawful to change....289

NURSES

to report births....109, 794

O

OATHS OF OFFICE (See Titles of Respective Offices)

committee on bonds, duties of, respecting.....612-613
for "public officers" (See Title, "Constitution of Delaware")
form of, and by whom administered.....31-32, 613
of sellers of meat in farmers' and truckers' market.....152-153

OBLIGATIONS (See Bonds)

of City, not to be impaired, &c.....145

OBSCENE POSTERS

prohibited in public, and removal of.....762

OBSCENITY

in words, pictures, posters, &c., prohibited.....762

OBSTRUCTIONS

of gutters, prohibited 788
responsibility for damages by.....124
on sidewalks, prohibited 743, 1001, 1020, 1021, 1023
on streets, prohibited 744, 1001, 1020

OFFAL (See Ashes, Garbage)

placing of, in sewers, prohibited.....1053
placing of, in streets, prohibited.....758, 823, 999

OFFENSIVE TRADES

exercise of, a common nuisance.....775-776
penalty for carrying on, without consent of Mayor and Council..772

OFFICES

vacancies in, how filled, in general.....35, 607

OFFICE HOURS

of Auditor 571
Bailiff of Council 577
Treasurer 576

OFFICERS (See City Officers)

OFFICIAL BONDS (See Titles of Respective Officials)

OFFICIAL OATH (See Oath of Office and Title, "Constitution of Delaware."

OILS (See Inspector of Oils)

appointment of inspector of....157, 588
duties of State chemist, as to....550-551
fee for inspection of....551
inspection and regulation of sale of....588-591
high constable, when duty of to inspect premises, containing....966
penalties for violations of ordinance relating to....588, 589, 591
reports of inspection of....590
returns of wholesale dealers in....590
sales of certain kinds of, prohibited....549
seals on barrels, containing....589
test of....550
regulations of storing of....966
uninspected, penalty for selling....589
who considered wholesale dealers in....590

OLD ACADEMY

title to, vested in the City....523

OLD FERRY ROAD (See New Castle Avenue)

vacation of....265

OLD KINGS ROAD

vacation of....265

OLEOMARGARINE

sale of, when prohibited....825

OPERA HOUSE (See Shows)

fee for license for....959

OPIUM

establishment for smoking of, prohibited....767
owners of, houses, when liable....768
penalty, for violating provisions of this ordinance....768
prosecutions for sale of, how brought....768, 769
sale or gift of, when unlawful....768

ORANGE STREET

part of, vacated....264, 945
width of....934

ORDINANCES

appeals from judgments for violations of..... 49
appropriation 74-75
extraordinary appropriation 75
drafting of, by City Solicitor.....574
copies of, to be furnished to Mayor.....567, 568
duties of Clerk of Council, respecting appropriation.....566, 567
how passed 54, 57
pleading of, resolutions need not set them out in full.....145
printed copies of, and admissible in evidence.....144
private, printing of 958
prosecutions for violations of, how brought..... 46
publication of 77, 614
violations of, how punished 40
how repealed 54

OWNER OF PREMISES

when liable in damages, for hole in, or obstruction on sidewalk..124

ORGANIZED MILITIA OF DELAWARE

City may make appropriations to.....548

OVERHEAD BRIDGES **(See Bridges)**

OYSTER HOUSES

regulations for removal of shells from.....776

P

PAGEANTRY (Exhibitions of)

license fee for 959

PARENTS OF CHILD

to report birth of child 109, 794

PARKS **(See Public Parks)**

PARK COMMISSIONERS

appointment of 169
appropriations to 170
bond of treasurer of 169
borrowing money for parks, may be recommended by.....173
Brandywine Park, land may be bought by, for extension of..981, 982

PARK COMMISSIONERS—(Continued)

compensation, none paid to 169
composition of Board of.....168
creation of Board of 168
expenditures by 169
Gilpin avenue, powers of, respecting.....256
jurisdiction of 172
organization and officers of 168
paving and curbing by 121-122
powers and duties of, as to purchase of land by.....171
powers of, as to certain new territory..... 22
public parks to be under control of.....170
exempt from taxation 170
removal of members of 173
reports of, to Council 173
special policemen may be appointed by.....172
use of parks may be regulated by.....172
vacancies in Board of, how filled 169

PARK PLACE (See Haslet Street)

PARK LANE

name of, changed to Harrison street 1059

PARTY WALLS

duties of Building Inspector, respecting 847-848
duties of surveyors and regulators, respecting, and also fences 133, 135
insufficient, removal and repair of 847-848
of stone 850
penalty for violation of regulations, respecting.....135, 904
powers of Council, respecting 56
regulations of 133

PASTURE STREET (See Washington Street)

name of, changed to Washington street 943
width of 934

PATROLMEN (See Policemen)

appointment of, by Park Commissioners.....172
appointment of, by Water Department.....183-184

PAVING

by abutting property owners 123
of alleys, by Board of Health 780

PAVING—(Continued)

certificates for, to owners 126-127
between curbs, how done and paid for 119
of footways, how done and paid for.....119
liens for, may be cancelled by Street and Sewer Department, when 246
mode of, may be regulated by Street and Sewer Department....123
by Park Commissioners 122
sale of property, for 120
Street and Sewer Department may compel by abutting property owner 123
Street and Sewer Department, may do, itself 124

PAVEMENTS (See Sidewalks)

PAY-ROLLS

of City officers 616
duties of Clerk of Council, respecting 615-616
Council, respecting 615-616
committees of Council, respecting 615-616
Treasurer, respecting 616
Finance Committee to endorse 616
fraudulent, penalty for making 616
of Street Department 615
system of, established 615
times of payment of 615
of Water Department 1079

PAWN BROKERS

act to regulate business of.....221
books, to whom, must be shown 221-222
books, to be furnished by Police Department.....221
to keep books as to goods pawned.....221
penalty for violating provisions of the law.....222
police officers have right to search building.....222

PEACHES (See Fruit and Grain Market)

PENS (See Hog Pens)

PENALTIES

informers to receive one-half of, when.....963, 972, 976, 977
to be paid into City Treasury.....144
Law and Order Society to receive one-half of, when.....535-536

PENSION FUND (Police)

how made up 219
investment of, how and by whom made.....220
for police officers and matrons.....217-220
matrons may participate in 220
Treasurer of City to be custodian of.....219

PENNSYLVANIA AVENUE (See Kennett Road)

steps and cellar doors on.....1017

PERMITS (See Licenses)

for building 837, 839
for dead persons 785, 792, 795
for burials, how issued 109, 795
for deposit of building materials in streets.....1001-1002
for digging up streets.....1004, 1047
when refused 1048
to dig cesspool upon premises.....127
for erection or repair of houses, may be refused until all taxes are paid 156
for paving or repairing sidewalks 1009
for sewer connections 241, 1047, 1048-1049, 1054
special, when granted by Street and Sewer Department...1054-1055
rates to be charged for, for opening streets.....1005, 1006
for water, rescission of 1082
for water supply, application for 1083
for water supply, how issued 1083

PETROLEUM (See Oils)

PHILADELPHIA, WILMINGTON & BALTIMORE R. R. COMPANY

Act authorizing lease of wharf to.....523
contract with, as to Spruce street.....257
land for overhead bridge may be acquired by.....512
property of, what subject to taxation and exemption.....523
overhead bridges may be built by.....510-511

PHOENIX FIRE COMPANY

location of 628

PHYSICIANS (See Port Physician and Vaccine Physician)

of police (See Police Physician).....216
to report births 794
to report deaths 109, 795
to report their names and residences.....794

PIERS (See Harbor, Wharves)

lines of 187-198, 201

PIGS (See Hogs)

PIGEONS

are "dumb animals" 972

PILES (See Harbor, Wharves)

PINE STREET

width and location of 941

PIPES

for steam, to be underground in streets 130
in streets and sidewalks, regulations of ..254, 519-520, 944, 1004, 1047
of Wilmington Coal Gas Company 519-520
taxes to be paid on 85, 86

PISTOLS

firing of, prohibited 751, 964

PITCH (See Tar)

PLACARDS ON HOUSES

how long, to remain 787
Secretary of Board of Health may place, when 787
size of 787
penalty for removing 787

PLANS

duties of Chief Engineer and Surveyor, respecting ...105-106, 619-620
new streets not to be placed upon, when 935

PLATE

taxation of, for public schools 91

PLOTS OF STREETS

contiguous to City, how made for record 251

PLUMBERS

(See Plumbing Inspector, Plumbing Rules and Regulations)
application of, to Street and Sewer Department for license to follow occupation of plumbing 1038

PLUMBERS—(Continued)

what to state 1038
cesspools may be connected by, with sewer..... 1054
deposit of $25 (and payment of $5) with Street and Sewer Department necessary for license to follow occupation of plumbing 1038, 1039
Street and Sewer Department may make use of deposit, when..1040
license to, by Street and Sewer Department..... 1038
when forfeited 1053
licenses, system of may be adopted by Street and Sewer Department, as to 244
term of license of ..... 1038.
fees to be paid by, for testing..... 592
indemnity bonds may be required by Street and Sewer Department of all 130, 244, 1039, 1052
licensed plumbers only persons allowed to engage in the plumbing business 1038-1039
exception 1038-1039
name of, not to be used by another, when..... 1054
permits granted to, to open streets upon application made therefor 1047
plans, &c., of work to be done by, to be submitted to Plumbing Inspector 1040-1041
Plumbing Inspector to be notified by, when work is ready for testing 1041, 1046, 1051
fine to be paid by, if not ready..... 1051
refusal to permit Plumbing Inspector to inspect work done by, will cause suspension or forfeiture of license..... 1053
registration of, with Plumbing Inspector upon receipt of license required 1040
removal by, of imperfect work..... 1046
Street and Sewer Department may regulate..... 155-156
subletting of work done by, not permitted without consent of Plumbing Inspector 1054
surety bond to be given by, to Street and Sewer Department, upon receipt of license 1039
character and conditions of the bond..... 1039
unlawful to open streets by, without permit..... 1053

PLUMBING INSPECTOR

(See Plumbers, Plumbing Rules and Regulations)

appointment of 1036
approval by, of plans filed by plumbers..... 1040-1041
bond of 1037
duties of, as to plumbing, &c. 1037

PLUMBING INSPECTOR—(Continued)

fees of, returned by the Street and Sewer Department to City (See 592) 60
Gas Inspector, duties of, to be discharged by.....592
notice to, by plumbers when ready for tests.....1041, 1046, 1051
oath of 1037
occupation of plumbing not to be engaged in by, while.....1037
penalty for failure by, to make inspections.....1041
penalty for interfering with, in the discharge of the duties of his office 1037, 1053
removal of, from office 1036
registration of plumbers, &c., with 1040
salary of 1037
special permits, Street and Sewer Department may grant upon proof to 1055
term of office of 1036
tests to be made by.....1041, 1046

PLUMBING RULES AND REGULATIONS

(See Plumbers, Plumbing Inspector)

air tests, when made.....1046
anti-freezing hoppers may be used 1045
back filling 1050
cast or wrought iron pipes to be sound and free from holes, how laid, &c. 1042
certificate of Plumbing Inspector that work has been properly done, when issued 1046
cesspools, when may be connected with sewer.....1054
when may be dug upon premises 127
connections not to be made with sewers, &c., without the permission of the Street and Sewer Department.....1053
drain, soil, waste, vent or supply pipes, how laid.....1042, 1050
excavations not to be made until application has been made to Street and Sewer Department (See Excavations).....254, 1047
what application to state, and conditions upon which granted 1048
excavations to have danger or signal light and be enclosed by the master plumber 1052
excavations of sidewalk, how to be made.....1051
allowed to be made upon condition that plumber will be liable for all accidents and damages.....1052
fee for inspection of plumbing work.....592
garbage, &c., not to be thrown or discharged in sewer....1053-1054
improper work to be removed 1046
inspection of plumbing to be made by Plumbing Inspector.....1053

PLUMBING RULES AND REGULATIONS—(Continued)
(See Plumbers, Plumbing Inspector)
inspection and testing of plumbing by Plumbing Inspector, when made 1041, 1046
houses, size of, for outside closets 1045
master licensed plumbers, only, allowed to make excavations .. 1046
exceptions as to certain public service corporations 1047
partnership drains not allowed unless permission be obtained from Street and Sewer Department 1050
penalty for violation of regulations of 1052, 1053, 1054
permit to be obtained before street can be opened 1053
special, when obtained 1054-1055
plans of work to be done to be filed with Plumbing Inspector 1040, 1041
private sewer connections, how made 1050
property not to be connected with sewers unless certain conditions be first complied with 1048-1049
public service corporations may make excavations in streets upon obtaining permit from the Street and Sewer Department .. 1047
rain water leaders not to be used as soil or waste pipes 1045
refrigerators not to be connected with waste or sewer pipes ... 1044
registration of persons engaged in plumbing 1040
regulations concerning (See Act in General)
sewer liens to be paid before connections can be made 1049
sidewalk not to be excavated until sewer permit has first been obtained 1051
sidewalk opened and taken up, to be replaced and kept in good condition for one year thereafter 1052
if not done, Street and Sewer Department may do work and deduct cost from plumber's deposit 1052, 1053
steam, exhaust, drip or blow off pipe not to be connected with sewer 1045, 1053
Street and Sewer Department has authority to make all needful 243, 244
time for connecting with sewers, when Board of Health has ordered it done 1049
traps, how to be placed 1044
not allowed on vertical soil and waste pipes 1043
vertical soil, waste and vent pipes, of what material and how run 1043
water closets in yard, how to be flushed 1045
regulations as to, in unventilated rooms 1045
regulations of, as to connections with soil pipes 1041, 1043
regulations of, as to connections with sewer, vaults, or cesspools 1041-1042, 1050

PLUMBING RULES AND REGULATIONS—(Continued)

(See Plumbers, Plumbing Inspector)

water closets, urinals, sinks, basins, baths, &c., how to be trapped 1044

POLES

bills and signs prohibited from being posted on.....633, 994
ordinances, of a certain kind respecting, omitted (See Preface)
penalty for posting bills, signs, &c., on 994
penalty for injuring lamp posts 968
for protection of work, penalty for displacing 948
tax on, may be imposed by the City.....84, 85, 86, 104
removal of, if tax be not paid.....104

POLICE (See Constable, Policemen, Police Force, Police Commissioners)

to assist Clerk of Market, when 828
committee on 611
chairman of committee on, a member of trustees of pension fund.219
special, in parks, powers of.....172

POLICE DEPARTMENT (See Police, Police Commissioners, Police Force)

Acts, relating to 205-223
pay roll of 615
(see note as to omission of ordinances relating to).....648

POLICEMEN (See Constables, Police Force, Police Commissioners)

appointment and removal of 209
badges, unlawful use of by others, than 211
board of trustees of police pension fund includes five.....219
compensation (additional) when may be paid.....210
contracts of City, of certain kind, not to apply to.....548
duties of, as to animals 972
at elections 211, 298
at fires 637
as to foundtains 971
inspector of elections may require, to obey his orders under penenalty for not so doing 298
lottery policy offices and duty of, as to.....970
notice to be given to, before retiring them.....217-218
number of 209
officers of Board of Health 770
penalty for breach of duty, by 212
pensioned, when, may be 217, 220
physical examination required of, before being retired.....218
political work of 211

POLICEMEN (See Constables, Police Force, Police Commissioners)—(Continued)

qualifications of 210
re-examination of, may be had by, after being retired, when.....218
salaries of 210
saloons, not to be entered by.....211
suspension and dismissal of 44, 212

POLICE FORCE (See Police, Policemen, Police Commissioners)

appointment and equipment of 209
composition of 209
control of 205
increase of 209, 210
payment of expenses of 216
physician of 216
rules of 215
unlawful use of badges, uniforms and whistles of.....211

POLICE COMMISSIONERS

appointment of 206
appropriation to, by the Council 59
bond and oath of 206-207
books to be furnished to pawn-brokers, by 221
composition of Board of 205
contingent fund of 216
expenses of, how paid 216
fire alarm system to be controlled by.....209
superintendent of, appointed by Commissioners 219, 600
janitor of Municipal Court, &c., appointed by.....600
matrons to be appointed by 215
may be removed by 215
members of board of trustees of police pension fund.....218
moving picture shows, powers of, as to.....962
officers of 207
officers may be removed by.....209, 212, 600
ordinances to remain in force until changed by.....215
pensioning of police officers by 217
physician to be appointed by 216
police force to be appointed and equipped by.....209
powers and duties of 207-208
qualifications and removal of 206
removal of 206
removal of matrons by 215
salaries of 209
salaries cannot be increased by 210

POLICE COMMISSIONERS—(Continued)

secretary of 207
special officers for park, may be appointed by 211
successors in office of, how appointed 206
terms of office of 205
vacancies in Board of, how filled 206

POLICE MATRONS (See Matrons, and Police Force)

may participate in pension fund 220
number, appointment and duties of 215

POLICE PENSION FUND

who to be board of trustees of 218

POLICE PHYSICIAN (See Police Force)

appointment, qualification and duties of 216
salary of 216

POLICE STATION

appointment of janitor of 600

POLICY OFFICES (See Lottery Policy)

POLL TAX

assessment of, for city 88
for public schools 90-91

POLLUTION OF BRANDYWINE CREEK 980

POOL ROOMS AND TABLES

City may license 553

POPLAR STREET

width and location of 940

POPLAR TREES

planting of, prohibited 995

PORCHES

regulations for erection of 859, 938
regulations of, on Gilpin avenue 256
regulations of, when projecting into street..938, 1013, 1014, 1015, 1017

PORK (See Inspector of Meat, Meats)

PORT PHYSICIAN

a member of Board of Health 137, 770

PORT WARDENS (See Harbor Commissioners and Wharves)

application of proceeds of sale of removed materials by.....192
compensation of 196
damaged vessels and cargoes, may be viewed by.....196
disputes as to water fronts, to be settled by.....195
election and terms of 193-194
election of master warden, to be by.....194
expenses of, how paid 197-198
harbor master, to be nominated by.....199
majority of, act 194
moorings of ships, may be regulated by.....196
nomination of, by Board of Trade 194
notice of sale of removed material.....192
oaths of 194
obstructions to navigation to be removed by.....191
penalty for violations of regulations of.....200
penalty for erecting wharves without license from.....190
purchase of land, may be recommended by.....196
regulations as to readjustment of wharf lines, may be waived by 188
removed materials may be sold by 192
suit for costs of abatements and removals, may be brought by..192
return and plots of new wharf lines.....198
salaries of engineers to be fixed by.....198
new wharf line may be made by.....198
wharf licenses may be granted by.....194
wharf nuisances may be abated by.....190
vacancies in, how filled 194

POSSE COMITATUS

when Mayor may summon, (doubtful) 67

POSTERS

obscene or indecent, prohibited 762
when removed by Chief of Police 763

POST OFFICE

buildings exempt from taxation 485, 486

POULTRY (See Inspector of Meat)

unsound, sale of, prohibited 805, 806

POWDER (See Gunpowder)

PRECEPT

issuance of, for paying and curbing 119

PREFACE iii

PRESIDENT OF COUNCIL

auctioneers' licenses to be signed by.....954
bonds of assessors and collectors, to be approved by.....102
bonds of engineers and surveyors to be approved by.....618
bonds of garbage collectors, to be approved by.....800
subpoenas to be signed by, in cases of contested elections.....413
City map to be signed by 129
City officer 30, 52
election of 52
elections, duty of, respecting 410
manager of free library, a 525
Mayor pro tempore, when to act as..... 34
member of Board of Assessment, Revision and Appeals.....80-81
member of Park Commissioners 168
money orders to be signed by 63
salary of 68-69, 608
tax warrants to be signed by..... 92
vacancy in office of, how filled 35

PRICE'S RUN SEWER

ordinance authorizing borrowing money for.....739

PRIMARY ELECTIONS

Act to provide for purity of 341-368
applies solely to New Castle County.....368
not to apply to election of delegates to State Convention...367
absent officer of, place filled how.....342-343
appointment of officers of 343
of clerks of 346
of inspectors for Wilmington 348
manner of 343
of qualifier of officers of 346
time of 345
of watcher at 363
ballot, the manner of electing at.....342
ballot box for 359
description of 359
locked throughout election 360
position of, during election 360

PRIMARY ELECTIONS—(Continued)

Sheriff to provide and deliver 359
ballots, to be printed, &c., at least five (5) days before.....367
to be printed by party's governing authority.....367
names on, to be alphabetically arranged.....367
manner of marking, to indicate elector's choice.....367
not counted, when 367
to be received from voters taking prescribed oath.....364
rejected, if oath not taken when required.....364
to be taken separately from box at count.....360
when counted, to be placed in another box.....360
board of election officers to hold.....342
how composed 342
candidates shall notify party's governing authority of desire to be such 367
names of, for one office, printed under title of office.367
certificates, blanks furnished by party's governing authority....362
delivery of, by inspector 361
filling and signing of, by officers 361
challenge by any member of party holding election.....364
ballot received, when oath taken on.....364
ballot rejected, if oath not taken on demand.....364
decided by officers of election.....364
illegal, a misdemeanor and punishable.....364-365
oath of elector on.....364
on, voter to stand aside until others vote.....364
clerks of 346
appointment of 346
duties of 360
compensation of 365
Clerk of the Peace
"voting books" to be delivered to.....355
original "voting books" for Wilmington to be delivered upon demand to Department of Elections by 352
penalty for refusal, &c., to deliver by.....359
comparison and correction of "voting books" of.....349, 350
compensation of officers and clerks of.....365
of qualifier of officers of.....346
by whom paid 346, 365
contests to be heard and decided by party's governing board....366
convention, City or county, expenses of.....368
State, act does not apply to.....367
expense of 367
correction of errors in "voting books" of.....350
Department of Elections (City) to make..350
inspector to make 350

PRIMARY ELECTIONS—(Continued)

County Committee to furnish tally sheets, &c.....362
expenses of election of delegates to City or County Convention paid by 368
expenses of election of delegates to State Convention paid by 367
failure of, to discharge duty, a misdemeanor 366
tie votes and contests to be decided by.....366
County, New Castle, Act applies solely to 368
definition of 341
delivery of "voting books" of, by Sheriff to registrar.....348
by registrar to Sheriff 349
by Department of Elections (City) to inspector 349
by inspector 355
by inspector to Department of Elections (City) 350
through Department of Elections (City) to Clerk of Peace.....355
by Clerk of Peace to Department of Elections (City) 352
Department of Elections for Wilmington, duties of 348, 349, 350-352, 353, 362-363

(See Department of Elections, 329-341)

penalty for neglect, &c., to deliver "voting books" by.....359
description of ballot box for 359
"voting books" for 348, 349
poll books 362
division of Wilmington into election districts.....351
duties of officers of 354, 360, 361, 364, 365
election officers, board of, to hold.....342
how composed 342
election officers, powers of 365
removal of, &c. 365
errors, correction of, in "voting books" of.....350
expenses of, incident to a general election to be paid by Levy Court of county 365
incident to Wilmington city election to be paid by Mayor and Council of Wilmington.....365
for election of delegates to State Convention to be paid by party's governing authority 367
for election of delegates to City or County Convention to be paid by party's governing authority.....368
form of "voting books" of 348, 349
general election laws, offences against, are offences in.....358

PRIMARY ELECTIONS—(Continued)

illegal voting or attempt to vote, &c., misdemeanors....356, 357, 358
inspectors of 342, 343
oath of, and by whom administered....345, 346
vacancy in office of, how filled....344
duties of 349, 354, 355, 361
compensation of 365
penalty for dereliction of 354, 355
for Wilmington, how appointed 343
term of office of 343
inspectors of election for Wilmington....348
by whom appointed 348
when appointed 348
duties of 349, 350
term of certain, ended 351
instructions, printed, furnished by party's governing authority to officers of 362
intoxicating liquor, forbidden in any place of election....359
election not to be held in place for sale of...358
drinking, &c., forbidden in election place....359
laws prohibiting sale of, on election days, not to apply to 368
penalty for violation of provisions concerning, at 359
judge of 342, 343
oath of, and by whom administered....345, 346
compensation of 365
for Wilmington, appointment 343
residence of 343
term of office of 343
Levy Court to pay expenses of, when....346, 365
Mayor and Council of Wilmington to pay expenses of, when....365
nominee, candidate receiving highest vote to be....366
ascertained and declared by party's governing authority 366
death, &c., of, vacancy filled, how....366
notary public to administer oath to County Committee....366
notice of time and places for holding....342
number of votes, to be publicly proclaimed at closing of polls...360
to be announced, on request, to any when voting 362
oath of officers of 345, 347
of clerks of 346
of County Committee in special case 366
of elector, when required by officers of....364
when challenged 364
of inspector in verifying voting books of....350

PRIMARY ELECTIONS—(Continued)

of substitute, when officer removed.....365
oaths, by whom administered 346, 347, 365, 366
when and to whom delivered.....346, 347, 365, 366
offences under general election laws offences under this Act....358
officers of
qualifications of certain 343
oath of, and by whom administered.....345, 346, 365
time of appointment of 345
term of office of 343
absent, manner of filling places of.....342-343
penalty for neglect, &c., to serve as.....344
have powers, &c., of county constable.....365
may arrest any guilty of unlawful conduct.....365
compensation of 365
duties of 346, 354, 360, 361, 364, 365
removal of, for violation of provisions of this Act.....365
penalty for neglect to serve as officer of.....344
for failure to qualify as qualifier of.....347
for stealing, &c., certain books, &c., of.....351
for failure of inspector to perform certain duties...354, 355
for unlawfully excluding watcher from room.....363
for unlawfully challenging elector 364-365
for receiving illegal vote 355
for refusing elector's vote unlawfully.....355, 356
for illegal voting or attempt to vote.....356, 357, 358
for offences under general election law applied to offences under this Act 358
for being inside of ropes except when voting.....363
for violation of requirements concerning intoxicating liquor 359
for malfeasance of County Committee in certain cases..366
for neglect, &c., of Department of Elections to deliver "voting books" 359
for neglect, &c., of Clerk of Peace to deliver "voting books" 359
for neglect, &c., of Sheriff to deliver "voting books"....359
ignorance of usage, no defence to any, when.....354
place for holding 358
not to be where intoxicating liquor is sold.....358
poll books, described 362
polls, time for opening and closing, for.....353
number of votes cast to be publicly proclaimed at closing of 360
powers of election officers of.....365
primary election districts at 358
how formed and limitations of.....358

PRIMARY ELECTIONS—(Continued)

appropriate names for 358
qualifier of officers of 346
appointment of 346
duties and compensation of 346
penalty for failure to qualify as.....347
qualified voters at 353, 354, 355
qualifications of electors under Act.....354, 355
officers of 343
registers, to be delivered by Clerk of Peace to Department of Elections (City) 352
to Clerk of Peace by Department of Elections (City) 355
registrar, duties of 349
voters' names, &c., to be registered by.....349
registration of electors for general election.....348
removal of officer violating provisions of this Act.....365
vacancy created by, how filled 365
oath of substitute on 365
revision of registration for city election.....352
ropes or chains at election places at.....363
persons forbidden within, except to vote.....363
penalty for violating provision concerning.....363
result of canvass of votes to be publicly announced.....361
Sheriff, duties of, in 348, 349, 359, 360, 361, 362
penalty for neglect of 359
tally sheets 360
blank, furnished by party's governing authority....362
tie vote at, how decided 366
time of holding 342, 352
limitations 342
usage, ignorance of, no defence to penalties, when.....354
vacancy in office, absent officer of.....342-343
of inspectors, how filled 344
on removal for violation of provisions of this Act 365
voters, who entitled to vote at 353, 354, 355
voting, manner of 362
voting books of qualified voters for.....348
description of 348, 349
Sheriff to deliver to registrar 348
registrar to deliver to Sheriff 349
Department of Elections (City) to deliver to inspector..349
inspector to deliver to Department of Elections 350
registrar to enter voters' names, &c., in 349
correction of errors in, by inspector 350
correction of errors in, by Department of Elections (City) 350

PRIMARY ELECTIONS—(Continued)

comparison and correction of, by Department of Elections (City) 350-351
comparison and certification of 349, 350
verification of, by oath 350
New Castle County (outside of Wilmington) 348
Wilmington City 349
delivery of, through Department of Elections to Clerk of Peace 355
original, to be delivered by Clerk of Peace to Department of Elections (City) 352
penalty for stealing, mutilating, &c., the 351
voters qualified, if names on 353
watcher, qualified elector may be 363
one may be named by each candidate 363
entitled to be in room 363
removal of, for cause, from room 363
unlawful removal of, misdemeanor 363
penalty for 363

PRINTING

committee on, duties of 613, 614
of appropriation ordinance by Clerk of Council 77
delinquent list by Assessors and Collectors 99
financial statement by Council 74
notice of assessment by Clerk of Council 89
private ordinances 958
statements of Treasurer and Auditor 987

PRISON CELLS (See High Constable, Police Commissioners)

care of 71

PRISONERS

expense of, how paid 71
to be kept in City prison 71

PRIVATE RIGHTS

ordinances, respecting, omitted (See Preface)

PRIVATE SEWERS

provisions as to construction, acquisition and cleansing of 136
connections of, with others, how made 1050
exhaust pipes not to be connected with 1053
permission to connect with, &c., when necessary 1053

PRIVATE SEWERS—(Continued)

plumbing system connecting water closets, &c., with, shall be given two inspections 1045-1046
regulations for the construction and use of.....243-244
regulations of plumbers as to 244
unlawful to connect cesspools with, when.....1054

PRIVIES (See Cesspools)

PROFANITY

in public, prohibited 762

PROPOSALS (See Bids)

PROSECUTIONS

for violations of municipal laws, ordinances or regulations of City, in whose name brought 44-45
how brought and mode of trial..... 46

PROTECTION POLES

in streets, penalty for displacing 948

PROSECUTIONS IN MUNICIPAL COURT

how brought and tried 46

PROTHONOTARY OF SUPERIOR COURT

to approve surety in recognizances in certiorari cases..... 48

PROVISIONS

Council may provide for inspection of..... 56

PUBLIC ACT

the charter of the City of Wilmington, is a.....146

PUBLIC BUILDINGS (See Committee on Public Buildings)

foreign flags not to be displayed on, when.....535

PUBLIC LAMPS

committee on 611
penalty for lighting, extinguishing, injuring, &c.....967-968
penalty for obstructing light from.....968
refusal to remove or abate obstruction to light of.....968

PUBLIC PARKS (See Park Commissioners)

acts relating to 168-173
appropriations by Council for care of.....170
bonds, issuance of, for.....173, 464, 465, 468, 477, 713, 714, 718, 732
City may take land for 168, 171
control of, in Park Commissioners.....169
exemption of, from taxation.....170
intoxicating liquors, not allowed to be sold in.....173
jurisdiction of Park Commissioners as to certain..... 22
meetings in 173
municipal jurisdiction over 172
paving and curbing in 121-122
purchase of land for 168, 171-173
regulations of use of 1095
rules and regulations for use of.....172
special policemen in 172
streets, sewers, pipes, wires, &c., in.....170

PUBLIC SERVICE CORPORATIONS

to file sworn statement with Clerk of Council.....86-87
to pay tax on tracks, poles, wires, conduits, &c.....84-87
taxes of, to be a lien as in other City taxes.....86-87

PUBLIC SCHOOLS

acts relating to 419-453
act relating to graded school facilities, not mandatory upon Board of Education in Wilmington 449
appropriation by Council to Board of Public Education for.59, 435, 437
how paid 436
assessors and collectors of taxes, duties of, as to making lists of children between ages of seven and fourteen.....443
duties of County Superintendent as to.....443-444
penalty for non-compliance with above provisions.....444
attendance officers, who are.....442
powers and duties of.....442-443
Auditor to examine and endorse as correct, all bills against Board of Education, before they are paid.....433
ballot boxes, used at election for members of Board of Education, when to be opened 430
ballots for election of members of Board of Education, form of and how voted 425
Board of Public Education, composition of.....419, 422
Board of Public Education, duties and powers of.....419-420, 431
Board of Public Education in Wilmington to have full supervision of schools and school property 419-420
Board of Public Education in Wilmington, general powers of....431

PUBLIC SCHOOLS—(Continued)

Board of Public Education, not to have power to borrow money and create debts, except ordinary debts 433
Board of Education to have same powers in Wilmington as are vested in County Superintendent, as to truants, &c....445
Board of Canvass, duties of, &c., as to election for members of Board of Education 430
Bonds may be issued by Board of Education on its own credit for new school houses 451
candidates for office of member of Board of Public Education, how named 424-425
certificates of election for member of Board of Education, when and how made and by whom delivered 430
challenge of females' right to vote, form of....426
challenging of voter, oath, perjury, &c., as to election of members of Board of Education 428
children between seven and fourteen years of age, to attend school five months, annually 439-440
exceptions 440
violations of law, penalty therefor....441
City Solicitor is attorney for Board of Public Education in Wilmington 437
compensation of election officers, for election of members of Board of Education 431
compensation of members of Board of Public Education....423
compulsory attendance of school children, (act relating to)..439-445
Constitution of Delaware to be taught and explained to scholars in all public schools 450
contracts, members of Board of Education not to be interested in, concerning city, when....423
Councilmen cannot be members of Board of Education while members of Council 427
department of elections, duties of, as to election of members of Board of Public Education 427
department of elections, duty of, as to book of registered voters at said election 429
dismissal of school teachers for cause, after hearing by Board of Education 420
election of members of Board of Public Education, under what laws held 424
election and terms of members of Board of Public Education....422
electors, qualifications of, to vote for members of Board of Public Education 426
estimates of expenses submitted by Board of Education to Council in May of each year....432
exempt from jury duty, members of Board of Public Education..423
exemptions from taxation, &c., all property of Board of Educa-

PUBLIC SCHOOLS—(Continued)

tion, real and personal **(See Art. 10, Sec. 3, Constitution)** 437, 486-487
flag of the United States to be purchased by Board of Education and displayed on or near the school houses....450
graded school facilities of school children, Act relating to....445-450
grades of schools to be established and changed by....420
ineligibility of members of Board of Education to office while members of Board....423
kindergartens may be established by Board of Public Education..420
lands for school houses may be purchased, leased, &c., by Board of Public Education....421
lowest bidder to be awarded all contracts over one hundred dollars, by Board of Public Education....438
mixed schools not allowed....432
non-resident pupils may be admitted to the public schools in Wilmington, when....432
oath of election officers holding elections for members of Board of Education....428
of challenged voters at election for members of Board of Education....428
of challenged female voters at election for members of Board of Education....426
of member of Board of Public Education....423
organization of election officers....428
officers of Board of Public Education....432
penalty for violation of election law....431
places of election for members of Board of Public Education, to be selected by Board of Public Education....427
plurality of votes necessary to elect members of Board of Education....426
Street Commissioner's duties as to truants....445
polls, when open for election for members of Board of Public Education....427
pupils, admission, suspension or expulsion of by Board of Public Education....421
qualifications of members of Board of Public Education....423
quorum of Board of Public Education....432
removal from office of member of Board of Public Education, for cause, after a hearing....424
removal of member of Board of Public Education, from ward in which he was elected, creates a vacancy....422
report of accounts, &c., of Board of Education to be printed in the public press and same presented to Council, when....433
returns of elections for members of Board of Education, to whom delivered....429

PUBLIC SCHOOLS—(Continued)

rules and regulations may be adopted by Board of Public Education 421
salaries of officers, principal, teachers and employees of Board, to be paid by Board of Education 421
school buildings hereafter erected, regulations as to..... 881-882
secretary of Board of Public Education, appointment and term of 421, 432
duty of, in case of contagious disease.... 783
school property to be vested in and controlled by the "Board of Public Education in Wilmington"..... 419, 420
State funds, how to be drawn by Board of Public Education.... 436
study, courses of, to be adopted and modified by Board of Public Education 420
Superintendent of Board of Public Education, appointment and term of 421
tax receipts, prima facie evidence of female electors right to vote for members of Board 426
teachers and superintendents, their qualifications, salaries, &c... 420
time of election of members of Board of Public Education..... 427
title to certain school houses, in city 438
treasurer's duty, respecting funds received from Board of Public Education 434
truants from school and how treated..... 442
vacancies in office of members of Board of Public Education, how filled 422
voting for members of Board of Public Education, how done.... 425
Wilmington, a consolidated school district..... 419
Wilmington Institute to be paid a certain sum by Board of Public Education 437
Council to reimburse Board, said amount..... 437
women may become members of Board of Public Education, when 427
women may vote for members of Board of Public Education, when 426, 427

PUMPS

Council may regulate and supervise (obsolete)..... 133

PUBLIC BATH HOUSES

Water Department may construct 183

Q

QUARANTINE (See Board of Health)

powers of Board of Health to establish.....780-787

QUARRIES

to be enclosed 749

QUEEN STREET (See Fifth Street)

extension of 941
name of, changed to Fifth street 941-942
width of 933

QUORUM

of Council 54
of Board of Health 138, 770
of Board of Public Education 432
of Harbor Commissioners 187

R

RACING

of fire companies, prohibited 626
in streets, prohibited 745, 748

RAILROAD COMPANIES

Acts relating to street railways 493-509
bells on locomotives to be rung by 755
Council's power, respecting tracks of, on streets (obsolete)..131-132
duties of conductors of, &c., as to fire hose.....636
freight cars to be loaded and unloaded on tracks in City without delay 1028
gates at street crossings to be kept by.....923
lookouts to precede locomotives of.....755
lookouts to be kept at street crossings.....755
ordinances and resolutions of a certain kind, respecting, omitted, (See Preface)
regulations as to bringing dead bodies into the City by....785, 792
speed of cars of, in City, not to exceed six miles per hour.....754
street crossings not to be obstructed by.....756
tracks of, prohibited on certain streets.....256, 508, 509
unlawful riding on cars of 922

RAGS

in an offensive condition, a nuisance 773

RATES

for sewer connections 233
for water supply 183

REAL ESTATE (See Registration of Real Estate)

acts in relation to sales of.....513-517
assessment of 83
ordinances respecting sales and leases of.....924, 928
registration of 105-108

RECEIPTS AND EXPENDITURES OF MONEY

City Auditor to prepare a statement of expenditures.....988
City Treasurer to prepare a statement of receipts.....988
Clerk of Council to publish statements of.....988
Council to publish statements of..... 74
failure of officers to perform duties relating to.....988
ordinances, relating to 986, 987

RECOGNIZANCES

in cases of appeal from Municipal Court 49
certiorari to Municipal Court 48

RECORDS

of births, deaths and marriages 108-109, 794
of Council, by whom kept 566

RECORDER OF DEEDS

duty of, respecting registration of real estate.....105, 106
to record certain plots 252
certain duplicate maps to be filed with.....201

REDEMPTION

of impounded animals 747, 765, 976
of land sold for taxes 99

REED STREET

part of, vacated 266

REFUGE FOR REFORMED WOMEN

homes of, exempt from taxation.....490

REGISTRAR OF DEATHS, BIRTHS AND MARRIAGES

appointment of 108, 793
blank forms of a certain kind to be furnished by 795
books for registration of deaths, &c., to be kept by 796
burial permits to be issued by 109, 795
duties of 108, 793, 796
election of 108, 793
list of clergymen, physicians, midwives, &c., to be kept by 794
office hours of 794
permits to be issued by 792
permits must be obtained from, to remove dead bodies 785, 792
records of births, marriages and deaths to be kept by 109, 793
removal of 108
reports of a certain kind to be made by 794
salary of 69, 608, 793
to have a seal 110, 796

REGISTRAR OF WATER

appointment of 178, 1077
duties of, in general 1078
ferrules may be detached by 1080
notice of rescision of contracts, to be given by 1082
permits for water, to be issued by 1083
reports, by 1078
removal of 178, 1077
secretary of Board of Water Commissioners to be 177
term, salary and bond of 1077
time for payment of water rents to be advertised by 1085
wash paves, permission of, as to 1085
water rents, to be collected by 1081-1085
water rents, when to be refunded by 1082

REGISTRATION

(See Registration of Real Estate, Registration of Voters)

of clergymen, magistrates and midwives 794
of deaths, births and marriages 108, 793
of dogs, regulations for 975-976
of motor vehicles 554
of plumbers 155, 1040

REGISTRATION OF REAL ESTATE

duties of Chief Engineer, respecting 105, 620
penalty for failure to make 107
provisions of law, respecting 105-108

REGISTRATION OF VOTERS (See Elections and Titles Thereunder) 272-328

absence of inspector, &c., at, who to act....286, 337
affidavit of notice of appeal from 313
affidavit of legal voter as to illegal registration at....308
hearing on and notice of same....308
of notice served on Registrar....313
age of applicant at, not to be entered on registers....326
entered on books of registered voters, in certain cases, 307, 325
alternate registrar, sitting, to have powers, &c., of registrar at..315
amendment of State Constitution, abolishing registration fee....327
appeal noted "yes" or "no" on books for....305
appeal from, or application for correction of, not heard on any registration day 314
appeal from, to resident Associate Judge, or other Judge....311
appellant to give notice to registrar....311
time of hearing 311
not allowed, in case of delay, when 313
decision of Judge final 311
Attorney General to speedily prosecute violations of Act of....301
ballot box, location during 286, 287
ballot box, stealing or destroying of, at 300
book of registered voters, general entries in....307, 314, 325
entries made in, in applicant's presence, when 307
book of certificates (blanks) for, prepared by Governor....325
books for, prepared by Governor 323
form, name and description of 323-325, 326
to be endorsed by registrars....326
books for, to be obtained from Clerk of Peace....322
delivered to inspector 322
delivered to Clerk of Peace 322
books for, delivered to registrars by Sheriff....325
books for, for special election....322
breach of peace, threats, assault, bribery, &c., at....298-299
bribery, &c., breach of peace....298-299, 306
challenge for, at 306
certificate of Department of Elections delivered to inspector.275, 276
certificate of removal 283
certificate given to registered voter 307
to registered voter removing from district....309
certificates appended to registers and lists....311
certificates (blanks) for, book of, prepared by Governor....325
challenge and cause of challenge at, noted on books for....305
challenged applicant refusing, &c., to take oath, disqualified....307
person's oath noted on poll list....285

REGISTRATION OF VOTERS (See Elections and Titles Thereunder)—(Continued)

challengers, how appointed and removed.....285
challenges, may be made by any qualified voter, when.....284, 308
change of number or name of street unlawful, when.....289
City Surveyor to furnish map of City to Department, when.....289
clerk of election and penalty for refusal to act.....277
Clerk of Peace, registrar to deliver duplicate books to.....316
duties of, to deliver books for registration.....322
color of applicant at, entered in book of registered voters.....307
not entered in registers.....326
comparison of registration books made by officers, when.....310
compensation of inspectors and clerks.....277, 317
for revision of registration 277
of officers of election, and expenses.....289
of registrar and assistant registrar.....317
of alternate registrar 318
of Department of Elections 289
of others 289
when and how paid 277, 289, 318
constable to serve process 317
Constitution of State amended by abolishing fee for.....327
correction of books for 310-311
custodian of books for, is registrar 315
days, &c., for 302
Department of Elections, duties and powers of, as to.....273, 301
to appoint place 273
to furnish room 273
to furnish all forms, oaths, &c. 273
to dismiss or transfer officers and fill vacancies 274, 275, 332, 337
to employ clerks and assistants 274, 332, 337
to notify Attorney General of violations of Act 301
compensation of, as to registration 272-273
disobeying inspectors, and penalty therefor.....298
disqualification of elector and cause of same noted on books at 304, 307, 308
disqualification of insane persons, &c. 304
duties and powers of officers in 301, 302, 306, 312
of Department of Elections, as to registration 273. 301
electioneering or political discussions in polling place unlawful, and penalty 290

REGISTRATION OF VOTERS (See Elections and Titles Thereunder)—(Continued)

election inspectors, appointment, &c. 274, 275, 332, 337
examined by Department as to qualifications 275
oath of 275
election officers, who are 287
may make canvass of election district....288
entries to be made on registers for....303, 304, 305, 306, 308, 309, 310
to be made, in certain cases, on order of Judge....314, 315
expenses for printing, &c., how and by whom paid....318
false canvass or entries by election officers, and penalty....294
false personation at, and penalty 290-291
fee for, abolished by amendment to Constitution, &c....327
fees for service of process as to....317
form of oath in challenge at, for bribery, &c....306-307
form of certificate 307
forms furnished by Department of Elections for....273
fraudulent entries, omissions or changes in books of....319, 321
penalty for 319, 321
fraudulent registration, &c., and penalty....319-320
fraudulent voting 292
general, to ascertain qualified voters, under Constitution....301
Governor to have books for, prepared....323, 326
to deliver books for, to Sheriff....325-326
impersonation at, and penalty 290-291
at election 292
penalty for violation 293
insane persons, &c., disqualified 304
inspectors required to serve but one term....276, 287
removal of 276
appointed by Department of Elections 275, 276
day after election deliver books to Clerk of Peace....284
failing to perform duty, and penalty....294
majority must concur 287, 300
wilfully neglecting, &c., to serve, and penalty....299-300
wilfully, &c., putting in box a ballot not offered by qualified elector, and penalty....295-296
interference with 291, 320
intimidation, bribery, &c., and penalty....291, 292, 293, 320
intoxicating liquor forbidden at 290, 318
penalty for violation of same....290, 318
place for sale of, not to be used for registration 273
Judge, Resident Associate, to hear appeals, when, where, &c. 312-313
on appeal, to order entries made on books for....314
duties of, imposed on any Judge sitting....315

REGISTRATION OF VOTERS (See Elections and Titles Thereunder)—(Continued)

last sitting, duty of registration officers, as to.....310-311
loss, &c., of books of, by registrar, and penalty.....321
majority decision of officers necessary at.....287, 300, 310
penalty for violation 300
meeting of registrars, &c., for 303
misconduct of election officers, &c., and penalty.....296
mutilation, &c., of books, printed lists, &c., and penalty.....321
name, &c., of street, &c., may not be changed, when.....289
names omitted, to be entered, when 310
nativity of applicant at, to be entered in.....303
naturalization noted on books for 304
notices, when and how to be served 314
notices of places and time for holding.....302
notice to registrar of application for correction of.....314
notice of appeal from, to be served on registrar.....311
affidavit that service was made.....313
notice, when written required to be given, what sufficient.....310
oath of voter removing from district.....281
to be preserved by inspectors.....281
of inspectors 275
of applicant, when challenged for cause.....306-307
conclusive evidence to officers.....307
refusal to make, disqualifies applicant.....307
if false, person making is guilty of perjury....307
on delayed appeal that delay was not to hinder, &c.....313
oath, false, perjury 297, 307
oaths, forms, &c., furnished by Department of Elections.....273
oaths may be administered by registrars.....317
members of Department of Elections 275
officers for, their duty 301
majority to act 287, 300, 310
penalties (See Separate Subjects)
276, 290, 291, 293, 294, 295, 296, 297, 298, 300, 318, 319, 320, 321
perjury, to make false oath &c. 297, 307
persons in military, &c., service, temporarily in State, not residents 304
places and time for 302
notice of same for holding registration.....302
police officer disobeying Board of Inspectors, and penalty.....298
political party having ticket, entitled to representative in room for 302
poll books, form and description 285
poll clerks, duty of 285
false entries by, and penalty 293-294

REGISTRATION OF VOTERS (See Elections and Titles Thereunder) — (Continued)

posting of printed lists of names on books of....308
postponement of registration of applicant at, in case of doubt...305
powers and duties of inspectors holding election....288, 316
process, how and by whom served....317
prosecution as to illegal votes, evidence may be given by accused to show honest belief, &c....301
prosecutions under this Act, special duty of Attorney General...301
qualifications for registration at....304
facts pertaining to, may be noted on books of registration....305
qualified voters, who are....304
who are not....304-305
quorum at sitting of officers for....310
registering more than once unlawful....287, 290
registered voter, when applicant's name entered....304
entitled to certificate from registrar....307
registers, entries in....303, 304, 305, 306, 314, 323, 324, 325
to be signed by officers, when....306
registrar, alternate, appointment, term, &c....333
registrar and assistants, place and time of sitting of, for....302
to give public notice of same....302
what persons admitted to room....302
manner of recording names....303-305
clothed with special powers....302, 316-317
malfeasance, &c., of, and penalty....319
to give certificate to registered voter....307
to print and post alphabetical lists of registered voters.308
to deliver one of each books to inspector on election day.316
to keep other of each books safely....316
to deliver duplicates to Clerk of Peace....316
to take books to hearings on appeal and for correction.315
to deliver books to alternate registrar....315-316
registration officers, appointed by Department of Elections....333
keep books till election day, duty then.315, 316
majority to act....310
removal of voter from district....280, 309
oath on removal....281
duty of inspector in case of....281
repeal of Acts for....322, 326, 327
residence of applicant for, to be entered....303
residence, certain persons not considered as acquiring....304
review by officers of any registration upon affidavit of a legal voter....308
entries on books upon decision after....308

REGISTRATION OF VOTERS (See Elections and Titles Thereunder)—(Continued)

service of process 317
fees for 317
Sheriff to deliver to registrar books for.....325
to serve process 317
signing of registration, by officers for.....306
special election, registration for 321
stealing, or secreting, &c., any books, records, &c.....296, 321
penalty for same 296, 321
abetting, and penalty 297
subornation of perjury 297
tampering with ballots and voters, and penalty.....297
term of residence of applicant to be entered.....304
voter's name, when entered as registered 304
when voting, entered in poll book.....285
witnesses at, admitted to room for holding.....302
limitations 302
may be ejected for disorderly behavior.....302
witnesses, registrar may compel attendance of.....317

REGISTRY CLERK OF DEPARTMENT OF ENGINEERING AND SURVEYING

Council to appoint 601
qualifications and duties of 601
term of office and salary of.....601, 602
vacancy in office of, filled by Council (appointee).....607

REGULATOR OF CITY CLOCK

duties and salary of 598, 599, 609

REGULATORS (See Surveyors and Regulators)

REGULATOR OF WEIGHTS AND MEASURES

(See Clerk of the Market)

of New Castle County, to inspect milk cans.....552

RELIANCE FIRE COMPANY

location of 628

REMOVAL

from office (See Titles of Respective Offices)
by City officers from City 35
of members of Council, from their wards.....35, 405

RENTS (See Clerk of Market)

collection of certain, by Auditor.....570
income, receipts, &c., received by departments to be paid to the City Treasurer 59
certain exceptions as to payment thereof.....59-60

REPAIRS

to sidewalks by Street and Sewer Department....122, 123, 1052-1053
lien for 122, 124
of streets between tracks (See Street Railway Companies).....132
in case of excavations 1004, 1039
contractor not properly making, work to be done at his expense and same deducted from his deposit.....1005, 1040

RESIDENCE

required of assessors and collectors 81
of City officers 31
of Mayor 31
of members of Council 30, 31, 53, 405
of voters at elections 303, 304, 404

RESIGNATIONS

of City officers 35, 607

RESOLUTIONS

of Council, how recorded 568
of Street and Sewer Department 993-1071

RETURN OF FREEHOLDERS IN STREET CONDEMNATION PROCEEDINGS 112

REVENUE (See Shows, and Other Titles Relating to)

from registration and licensing of motor vehicles.....562

REVIEWS

in case of opening or widening of streets.....112, 117

REVISION

of assessments (See Board of Assessment, Revision and Appeals)

RIDDLE'S ROAD

part of, vacated 268

RIOTS

in markets, suppression of 828
powers and duties of Mayor, respecting (doubtful) 67

RIVER DELAWARE (See Rivers)

bulkhead lines, wharves and pier lines on 201

RIVERS (See Respective Titles)

abutters on, exempt from sewer liens 243
bathing in, when prohibited 753
Brandywine, contamination of 980
discharging ballast into, prohibited 916
regulations of vessels in 915-918
wharves, piers, and bulkhead lines, on Delaware and Christiana 185, 188, 190, 201

ROADS (See Streets, and Also Respective Titles of Same)

ROBINSON STREET

part of, vacated 1060
width and location of 262

ROCKFORD ROAD

Act authorizing a sale of part of 517
to be vacated, when 270

ROCKFORD TOWER

City given authority to indemnify DuPont Company for use of lands near 545

RODMEN OF ENGINEERING AND SURVEYING DEPARTMENT

election of 605
salary of 602, 605
vacancy in office of, how filled (appointees) 607

ROLLER SKATING

on sidewalks, unlawful 1021

ROOFS

of wood, prohibited 854

ROPE DANCING

prohibited, without a license 751

RUBBISH

placing of, in streets, prohibited.....998, 999, 1002
not to be mixed with ashes.....998
where deposited for removal.....894, 998

RUNS (See Water Courses)

RURAL OR SUBURBAN REAL ESTATE

how assessed.....487

S

SABBATH DAY

assembling of minors on streets, on, prohibited.....751

ST. MICHAEL'S DAY NURSERY

may receive children under ten years of age, when.....533, 534

SALARIES (See Titles of Respective Offices)

compensation, in addition to, not allowed.....70-71
list of.....68-69, 608-609

SALES (See Auctions, Sales of Real Estate)

bogus, prohibited.....524
of corn, regulations for.....953
of ice, regulations for.....953
for collection of taxes.....97-98
liens for street assessments.....116
paving and curbing.....120, 121, 122
repairing sidewalks.....122, 124
sewers.....242

SALES OF REAL ESTATE

Acts, in relation to.....513-517
ordinances, authorizing.....924-928
sand lot, Act validating sales of.....514
Eighth and Scott streets, Act authorizing, at.....516
old Academy lot, Act authorizing sale of.....515
Twelfth and Orange streets, Act and ordinance authorizing, at..513
Rockford road, Act authorizing sale of.....517

SALOONS

entry of, by policemen, when unlawful.....211
not to be used for registry or polling place, when.....273, 358

SAND LOTS

enclosure of, required 749
sale of 513, 514

SERGEANTS OF POLICE (See Police Force, Policemen)

number of 209
salary of 210

SECRETARY TO MAYOR AND EXECUTIVE (NOW ADVISORY) BOARD

appointment of 604
qualifications, duties and salary of.....605

SECOND ASSISTANT ENGINEER OF SURVEYING DEPARTMENT

salary of 602, 608

SCHOOLS (See Public Schools)

SCHOOL ASSESSMENT (See Assessments)

SCHOOL HOUSES (See Public Schools)

SCHOOL TAXES

Council may fix amount of, to be raised.....90-91

SEALS

City may have common seal 28
of City, Mayor to have custody of..... 33
Mayor's office 35
Municipal Court and City Judge 50
Registrar of Deaths, &c.....110, 796
on weights and measures 815

SEALER OF WEIGHTS AND MEASURES (See Clerk of the Market)

SECOND STREET

extension of 941
part of, vacated 265, 949
width of 934

SECRETARY OF THE BOARD OF HEALTH

appointment of 108, 771
cesspools, list of to be kept by.....778
duties of 138, 783

SECRETARY OF THE BOARD OF HEALTH—(Continued)

placards, may be placed on houses by, when 787
removal of 108
salary of 608, 771

SECRETARY OF BOARD OF TRUSTEES OF POLICE PENSION FUND 219
bond of 219

SECRETARY OF STATE

map of Delaware River, filed in office of 201

SETTLEMENT WORK

property used for, exempt from taxation 492

SEVENTH STREET (See Broad Street)

extension of 933, 941

SEVENTH WARD

limits of, extended 21, 22, 26, 28

SEWERS

(See Street and Sewer Department, and Plumbing Rules and Regulations)

abutters to pay for 239-240, 243
application for permits for 1041, 1047, 1048
assessment for costs of 239, 240, 243
bids for materials for, publication, &c 234
Board of Health may compel connections with 142-143, 1049
cesspools, how connected with 1054
unlawful on premises having sewer accommodations, when 127
condemnation of 137, 233
condemnation of property for 137, 228, 245
connections with 241, 243, 1041, 1048, 1049
construction of 136-137, 238-239
contract for work on 234
control of 224, 228
cost of, how apportioned 239-240
cost of, how paid 136-137
Council's former powers and duties, concerning 136-137
Street and Sewer Department in position formerly occupied by Council 229

SEWERS—(Continued)

(See Street and Sewer Department, and Plumbing Rules and Regulations)

danger signals as to (See Danger Signals)
duties of Chief Engineer of Sewers....1035
excavations for (See Excavations)
exemptions from assessment for....240, 243, 486-487
garbage, &c., not to be placed in....1053
land exempt from assessment for....240, 243, 486-487
lien for cost of....241
to be paid before connection permitted....1049
when may be cancelled by Street and Sewer Department....246-247
may be built within a mile of the City....245
ordinances relating to, remain in force, &c....230
ordinances authorizing issuance of bonds for, (See Bonds, "Sewers")
permit for connecting with (See Permits)
1004, 1041, 1047, 1048, 1049, 1053, 1054
plans for....231
plans of, and duties of Chief Engineer, respecting....619-622
private (See Private Sewers)....136, 137, 244
private, regulations of (See Private Sewers)....244
in public parks....170
rates for, how fixed....233
refrigerators not to be connected with....1044
regulations for use of....243
regulations as to plumbers in regard to....244
regulations of connections with....243-244, 1049
regulation and maintenance of....136
regulation of construction and use of....243-244
release for damages caused by connecting with....241
sale of land for assessment unpaid, when and how made....242
steam or exhaust pipes not to be connected with, when....1045
water closets connected with, regulations of....1041, 1043

SHEEP (See Animals, Cattle and Inspector of Meats)

at large in streets, prohibited....745, 747
carcass of, when unlawful to sell....164-165

SHINNEY

playing of, in streets, prohibited....753

SHIPLEY RUN

changes of course of....908-914
size of culverts of....908
width of....909, 910, 911, 912, 914

SHIPLEY STREET

leasing wharf at end of 920
width of 934

SHIPS (See Vessels)

SHOP KEEPERS

may exhibit goods on sidewalks 743, 823-824, 826

SHOWS

Council may regulate 56, 522
fees for 522, 959-960
liability of owner of premises for unlicensed shows 960
licenses for, when required 959, 960
Mayor to license 959, 960
penalty for having, without license 751, 959-960
Police Commissioners' powers as to certain 962
rules and regulations for certain, by whom made 961

SHRUBBERY (See Trees)

SIDEWALKS (See Streets)

advertisements, hand-bills, waste paper, &c., casting on, a nuisance 999
bicycles on, unlawful 995, 1023
board walks to be laid when sidewalk removed 906, 1001-1002
booths, stands, &c., on, unlawful 743, 823
booths, stands, &c., on, regulations of 823, 826
Building Inspector to require laying of board walk, when 906
cellars in, how and when rented 824
certificate as to paving of 126
to be kept clear for persons walking on 742, 1001, 1020, 1021, 1023
curb stone markets on (See Curb Stone Markets)
danger signals at excavations on (See Danger Signals)
decayed fruit and refuse, not to be thrown on 797, 825
defective, a nuisance 1006-1007
duties of Clerk of Market, as to 744
excavation in, regulations of (See Excavations) 944, 1006, 1007
exhibiting goods on, within certain limits 743, 823-824
garbage or offal not to be placed on 797, 825, 999
idling or congregating on, prohibited 761
indecent or disorderly conduct on 762
meat must not be cut on 1026
obstructions on, what unlawful 743, 1001, 1020, 1021, 1023
paving of by Street and Sewer Department 119, 123-124

SIDEWALKS (See Streets)—(Continued)

assessment and collection of cost of.....119-120
by abutting owner 123-1008
in public parks 122
penalty for riding or driving horses, wagons, &c., on.....742-743
penalty for violating ordinance as to paving or repairing.....1009
Portland cement concrete to be used for paving.....1008
regulations for signs, awnings, bay windows, &c., over.760, 859, 1013
repairing of by Street and Sewer Department.....123, 124, 1009
assessment and collection of cost of.....120, 121, 122, 124
lien for cost of 120, 121, 122, 124
repairing of, when to be done with Portland cement concrete...1009
repairs to, by plumber 1052
deposit used if not done 1053
roller skating on 1021
sliding, sledding and coasting on 1020
snow to be removed from 1018, 1019
spitting on, unlawful 764, 1000
unlawful to injure grass, trees or plants on unpaved spaces of 995-996, 1007
vendues upon 743
wheelbarrows and hand carts on 757, 763
wires over 954

SIDINGS

regulations for construction and removal of.....132
ordinances, &c., authorizing, omitted (See Preface)

SIGNS

over sidewalk, regulations of 760
obstructions of light by, when prohibited.....968
on poles and trees, unlawful 633, 994

SINKING FUND (See Bonds, Sinking Fund Commissioners)

Act not to extend or increase bonded debt of City.....457
acts relating to 454-484
not to be impaired by 145
interest on, when to cease 456
interest on, rate of, how fixed 458
new issue of 459
ordinances relating to, and City debt.....650-739
plan of, established 454-455
extended 458, 459

SINKING FUND COMMISSIONERS (See Sinking Fund, Bonds)

appropriation to 455
bond of 457
cancellation of bonds, by....457
election, term, and qualifications of....456
rate of interest on bonds to be fixed by....458
records of 457
not to receive salary 456
certain moneys from sale of sand lot, to be paid to....514
proceeds of certain sales to be received by....928
vacancy in office of, how filled 607

SIXTH STREET (See Hanover Street)

SIXTEENTH STREET (See Mill Street)

part of, removed from plan or map of City....1064
part of, vacated 266

SKINS

in an offensive state, a nuisance 773

SLAUGHTER HOUSES

erection of unlawful 774, 789
inspection of by Board of Health....775, 790
executive officers of Board of Health....776
Inspector of Meats 807
permitting contents of to run into street, prohibited....773
refuse from not to be thrown in sewers....1053
regulations for those existing 775, 789

SLEDDING OR COASTING

on sidewalks, prohibited 1020
on streets, prohibited 1020

SLEIGHS

standing of, in streets, prohibited....744

SLEIGHT OF HAND (Exhibition of)

license fee, for 959

SLIDING

on sidewalks, unlawful 1020

SLUICE WAYS

when lawful 193
when unlawful 189

SMALL POX (See Contagious Diseases, Quarantine)

burial of bodies of persons dying with small pox, &c....785, 786, 792
physicians to report cases of 783
regulations, respecting 785
regulations for persons diseased 783-784

SNOW

penalty for not removing 1020
removal of from sidewalks, by whom to be done.....1018, 1019

SOLICITOR

appearance in Courts for City by.....573
appointment of 66
approval of bonds by, before being executed by the City.....573
Assistant City Solicitor may be appointed and removed by..... 66
a City officer 30
to collect unpaid balance due from assessors, &c.....101
drafts all legal papers for City and gives opinions when called upon to do so 572
draws bonds of contractors, engaged in City work 980
duties of 66-67, 572-574
duty of, respecting certificate of assessors and collectors..... 98
duty of, respecting collection of taxes.....98, 99
examines titles for City 573
extra compensation to, when 574
fees of, in Municipal Court 46, 52
fees for legal services, not to be paid without approval of..... 67
legal adviser of Board of Education.....437
legal adviser of City 67
ordinances, prepared by 574
powers of, as to Municipal Court 66
prosecutor in Municipal Court 46
qualifications of 66
reports made to City Council by.....574
salary of 66, 68, 574
stenographer and typewriter may be employed by.....606
term of office of 66

SPEAKMAN STREET

part of removed from plan or map of City.....1063

SPECIAL CALLS BY CHIEF ENGINEER OF THE FIRE DEPARTMENT 642

SPECIAL POLICE

appointment of, for public parks 172, 211
appointment of, by Water Department 183-184

SPEED OF RAILROAD CARS 754

SPRINKLING OF STREETS

by street railway companies 1026
penalty for neglect, by street railway companies as to..... 1027

SPITTING ON DOOR STEPS 762

on sidewalks or in public places, prohibited..... 764, 1000
definition of, and penalty for 764, 1000

SPRUCE STREET

opening of part of, prohibited 257
parts of, vacated 257, 265, 1060
width and location of 941

STABLES

not to be erected within forty feet of adjoining property owner, when 903
offensive or noisome, prohibited 774, 788
throwing or running contents of, into streets, prohibited..... 773

STAGNANT WATER

in cellars, prohibited 773, 788
removal of, by Board of Health 143

STALLIONS

showing of, in streets, prohibited 520, 749

STALLS (See Stands)

STANDS (See Carriage Stands)

on sidewalks, prohibited 743, 823, 826
when shop keepers may have, on streets..... 743, 824, 826

STATE AUDITOR

to audit accounts of Wilmington Institute..... 525

STATE DETECTIVES

Governor to appoint 160
how removed 161-162
term of office 160
salary, powers, duties and oath of office.....161

STATE OF DELAWARE (See Title, "Constitution of Delaware")

property of, exempt from taxation 83
standard of weights of, is that of City.....814

STATE CHEMIST

custodian of standard of weights of State.....814
to make certain tests as to oils 550

STEAMBOATS (See Vessels)

infected with disease 780
regulations as to carrying dead bodies by.....785, 792
regulations as to speed of 918

STENOGRAPHER AND TYPEWRITER FOR CITY SOLICITOR

employment of 606
salary of 607

STEPS

how to be erected 128, 256, 938, 1017

STIDHAM STREET (See Fifteenth Street)

extension of 941
name of, changed to Fifteenth street 941

STONES

throwing of, in streets, prohibited 753

STOOPS

how to be erected.....128, 938, 1017

STRAW (See Hay)

sales of, from wagons, prohibited in streets.....1012

STORAGE (See Auctioneers)

STREETS

abutter may pave (obsolete) 123

STREETS—(Continued)

abutting owners on certain, may permit sale of produce on.....824
ancient, extension of 941
animals at large in, prohibited 745, 747
Acts and ordinances authorizing bonds for **(See Bonds, "Improvement of Streets")**
aqueducts and water pipes in 177
area ways and cellar ways in.....1016, 1017
ascents and descents of, ordinance regulating the.....129, 935
ashes, offal, &c., not to be thrown into.....758, 999
awnings, signs, bulk windows, &c., on, regulations of.760, 1013, 1015
bay windows, &c., projecting into 760, 1013
Board of Health may order paving of.....780
bonfires and fireworks, in, prohibited 751
booths, stands, &c., in, when allowed and where prohibited 743, 823, 824, 826
boundary, centre line of, when.....74, 81-82
bread, foreign fruit, &c., on, unlawful except.....826
building materials in 1001
cellar renters may have stands on, when 824
centre line of, boundary, when.....74, 81-82
centre stones in 111
City map, must conform to 129
coasting and sledding on, prohibited 1020
condemnation of land for 111-117, 253
contracts for work on 234
Council's former duties, respecting 55, 56
curb stone markets on **(See Curb Stone Market)**
curb stones of, regulations as to.....123, 937-938, 1010, 1011
damages for taking lands for.....111, 112, 113
danger signals on building material, in.....1002, 1003-1052
danger signals at excavations, in 949, 950, 1052
dedication of land for 250, 251
deeds for beds of, when may be accepted.....935, 1018
deposits of building material in, when.....1001
dirt, debris, &c., in, to be cleaned daily.....1002
drivers on, duty as to fires.....635
drivers on, to hold reins or be near to horses.....746
drivers on, to keep to right hand side.....745
drivers on, not to exceed a moderate gait.....745
excavations in, regulations as to **(See Excavations)**.....246, 254
excavations, for water and gas pipes, &c., regulations for 130, 519, 520, 944
extending and widening of 111
extending, widening and laying out of.....112
fast driving on, prohibited 745
fences not to be allowed to encroach upon.....934

STREETS—(Continued)

fish not to be thrown into.....823
flags, banners and bunting in and across, when allowed.....761
flap wings and side awnings over.....760, 1015-1016
fruit that is decayed, and refuse, must not be thrown into...824-825
fruit that is diseased or unripe, not to be sold on.....808
garbage and refuse not to be thrown in.758, 797, 798, 804, 823, 825, 999
gates at crossings of, by railroads, when required.....923
gutters in, not to be obstructed.....788, 823
gutters, regulations as to 224, 228, 229, 937
hay in wagons, not to be sold on.....1012
impounding and sale of swine at large on.....747, 765
indecent conduct and profanity on, prohibited.....762
labels for name of 943
lands contiguous to City, how laid out on.....250, 252
lands outside City, how laid out on.....253, 254
loitering or congregating on, when prohibited.....761
lookouts, &c., at crossings of, by railroads.....755
masquerades on, regulations of 757, 758
meat must not be cut on sidewalks of.....1026
money deposits required before digging up.1004, 1005, 1039, 1040, 1053
minors not allowed to assemble on.....751
motor vehicles on, regulations as to.....554
mountebanks on, prohibited 826
names of, when unlawful to change.....289
names of certain, changed 942
new, who to lay out 112
newspapers with indecent words, &c., in them, prohibited on.....762
obstructions in, prohibited 744, 1020
obscene pictures posted on, prohibited.....762
offensive matter must not be thrown or discharged into....773, 823
opening of, &c., of.....112, 228, 253
opening, payment of cost of (benefits).....115
ordinances and rules relating to 230
owners of property one-half mile outside of city, may lay out...253
may change grade of, with consent of Street and Sewer Department 254
owners of property contiguous to City, may lay out.....250
paving of, between curbs.....119
paving of footways of 119
permits for digging up 1004, 1047, 1049
plans of (ancient), adopted and confirmed.....935, 940
plans for 230, 231, 619-622
plans of, duties of Chief Engineer, respecting.....230, 619-622
plots of, contiguous to City, to be filed in the office of the Recorder of Deeds 250
of what made 251

STREETS—(Continued)

when recorded, it amounts to dedication.....251
protection poles in, penalty for displacing 948
in public parks 170
racing in, prohibited 748
railroad cars standing across, prohibited 756
railroad companies to put gates at crossings of, when.....923
railways on 131
removal of certain, from map or plan of City...1061, 1064, 1068-1069
repairs to 1004-1005, 1039, 1040
repairs of, between railway tracks (See Street Railway Companies) 132
scrapings from, regulations of deposits of.....786
sewers in, regulations as to.....244, 1004, 1041, 1047, 1049, 1051, 1053
shinney, ball playing and throwing of stones in, prohibited.....753
shop keepers, &c., may exhibit goods on within four feet of the building line 743, 824, 826
small pox patients, at large upon, when prohibited.....783, 784
sprinkling of, by street railway companies, when to be done....1026
stallions, not to be shown in.....520, 749
steps and stoops, regulations as to.....128, 938, 1017
Street and Sewer Department, has control of.....224-237
swine at large on, prohibited.....745, 747, 764
Tenth street to Eleventh street, distance between.....942
tracks and sidings on.....132
tracks prohibited on certain 256, 508, 509
turnpikes, when and how may be taken for public.....118
underground pipes and wires in.....130
vacation of, and roads 110, 264-266, 1064-1070
wagons, &c., standing in, prohibited.....744
wharves leased at ends of (See Wharves)
wheelbarrows, &c., on 763
width of, hereafter, to be forty feet.....935
width of sidewalk of, fixed 937
width of certain, established 933, 935
width of, acts relating to 127-128
Wilmington Coal and Gas Company's rights in.....519, 520
wires over 954

STREET CARS

(See Wilmington City, Eighth Street, and Front and Union Railway Companies)

blocking of, unnecessarily, not to be allowed.....1027
conductors of, to stop cars upon approach of fire apparatus.....635
to be equipped with fenders and wheel guards.....1024

STREET CARS—(Continued)

(See Wilmington City, Eighth Street, and Front and Union Railway Companies)

franchises of railway companies operating, that have not been used, recalled and annulled 1031
freight cars not to remain on track longer than necessary to load and unload 1028
motormen of, not to obstruct or interfere with ambulances.986, 1024
not allowed to remain on street when not in use.....1029
penalty for failure of companies operating, to abate unnecessary and avoidable noises 1030
tracks for, required to be laid on certain streets.....1032
forbidden on certain streets 256, 508, 509
unlimited consents for laying of tracks, revoked.....1031
unnecessary and avoidable noises by, to be prohibited, and duty of Street Commissioner as to.....1030

STREET COMMISSIONER

(See Street and Sewer Department, and Streets)

appointment of 230
ashes and household rubbish to be removed under supervision of (See p. 225) 998
Auditor's duties respecting 570
Building Inspector to perform certain duties, formerly performed by 581
certificate to Chief Engineer and Surveyor, to be issued by.....1009
control of 230
danger signals in streets, duties of, as to.....950
deposit, amount to be fixed and held by, in certain cases.....1005
duties as to paving and curbing.....119, 1009
duties of, generally 230
excavations, to report, as to.....944
gunpowder, duties as to.....964
hay, duties of, as to storing.....752, 753
money deposits for tearing up street, when to be used by.....1005
noises of an avoidable character made by street railway cars, duties of, as to 1030
nuisances in streets, to be abated by.....143
obstructions to light of public lamps to be removed by.....968
officer of Board of Health.....770
pay roll, duties of, as to.....615
permits for paving and repairing of sidewalks to be issued by..1009
removal of 230
salary of 608
street scrapings, deposits of, by.....786
tar in state of manufacture, duties of, as to.....967

STREET COMMISSIONER—(Continued)

(See Street and Sewer Department, and Streets)

telegraph wires, duties as to....954
term of office of....230
trees to be trimmed and removed by order of....995
trees, duties of, as to....995

STREET CROSSINGS

obstruction of, by railroad companies, prohibited....756
railroad companies to put gates at....923
railroad lookouts to he kept at....755

STREET AND SEWER DEPARTMENT

accounts and books of....232
accounts of, to be examined by Council and Auditor....236
Act relating to....224-237
sewers and drains....238-248
applications for sewer permits to be granted by....1004, 1047, 1048, 1049
appointment of Commissioners of....227
apportionment of cost of sewers to be made by....239
appropriation to, by Council....59, 231-232
assessments for sewers, powers and duties of....239, 240
none made by, when....243
ashes to be removed by....225
Auditor to examine bills of....235
bids for work to be advertised for....234
bids for work for, how to be signed....234
bills for paving and curbing to be presented by....120
bonds of drain layers to be approved and filed by....1039
bonds of members of, form of....236
bookkeeper and assistant secretary, office of combined by....1034
cancellation of curb, paving and sewer liens may be made by, when....246
certificates for curbing and paving to be recorded by....126, 127
change of grade outside of City, may be approved by....254
compensation of....228
condemnation of land by, powers of, as to....228
construction and use of sewers to be regulated by....243
contracts of, how let out by....234
cost of constructing sewers by, how paid....239
Council, estimates prepared for, by....231
Council to determine amount necessary for....231
curb, powers of as to....119, 123, 1010
creation of....224
damages for land, &c., taken by....228, 246
deposit of moneys of....236

STREET AND SEWER DEPARTMENT—(Continued)

deposit of moneys with 1004, 1005, 1039, 1053
deposits of building materials in streets unlawful without permission from 1001
disbursements by 236
drain layers to be licensed by.....244, 1038, 1039
drain layers to be regulated by.....244
estimates to be furnished to Council by.....231
exemptions from assessment of 240, 243, 486-487, 523, 526
fiscal year of, termination 1071
footways to be repaired by 123, 124
Gilpin avenue and changes that may be made in, by.....255
house drainage and cesspools may be regulated and inspected by.155
land may be sold for sewer liens by.....242
lien of assessments by 241
market shed at Front and Church streets under the direct control of 832
moneys of, unlawful use of, by 235
oath of members of 227
officers and agents may be employed and discharged by.....232, 233
officers and servants of 230, 1008, 1034
ordinances to remain in force until changed by.....230
organization of 228
overhead bridges, powers and duties of, as to certain.....510-512
paving liens to be collected by 120, 122
curbing and paving of footways to be under the direction of 119-123, 1009, 1010, 1011
permits for drains and sewer contracts to be issued by 1004, 1047, 1048, 1049
permits to be issued by, for deposits of building material in streets 1001
permits for privy vaults may be granted by.....127
special when granted by.1054-1055
plans for, by whom made and kept.....230, 231
plots of land contiguous to City, may be approved by.....250, 251
plumbers to be under regulation of.....155
politics of members of 227
powers, duties and jurisdiction of.....224-229
powers formerly possessed by Council now vested in.....229
property may be purchased by 233
qualification of members of 227
removal of members of 227
rents, &c., except sewer liens, returned to City by..... 60
repairs to be made by, from deposit money, when.....1052-1053
rights of owners of land assessed by.....241
rules may be made by.....230
rules and penalties that may be imposed for breach of them....244

STREET AND SEWER DEPARTMENT—(Continued)
rules and regulations to be printed by, and left in office.....245
salaries of 228
sewers may be condemned by 233
sewer rates may be fixed by 233
sewers may be constructed by 238-239
sewer liens may be collected by 242
sewer liens to be certified by 241
sewer liens and duties of, as to 241
sewer permits to be issued by 243
sewers within one mile of City may be built or acquired by.....245
sewer rates to be fixed by.....233, 239-240
sewer connections to be regulated by 241
small streams and land may be acquired by, amicably, otherwise by condemnation proceedings 246
small streams within one mile of City may be taken by, for sewers 245-246
statements of receipts and disbursements by, to committee of Council 236
Street Commissioner under control of.....230
street railways and powers of, as to.....494, 495, 498, 499, 503, 508
supervisors of, and their duties.....1034
terms of office of members of 226
trees, and powers of, over.....994, 995
turnpike, when and how may be taken for public street by.....118
unused street railway grants, forfeited by.....1031
vacancies in, how filled 227
vacation of streets for overhead bridges, may be made by.....512
violation of permits and powers and duties of, in such cases..1052-1054
Webb street and authority to lay sewer in.....247

STREET RAILWAY COMPANIES (See Titles of Respective Companies)
to keep cars, &c., in condition to avoid unnecessary noise.....1030
to pay a certain tax on tracks, &c..... 84
sprinkling of streets, duty of, as to.....1026
tracks to be laid by, on certain streets.....1032
not to be laid on certain streets.....256, 508, 509
unlimited consent to, annulled 1031
unused franchises of, annulled 1031

STYLE AND NAME OF CITY 28

SUPERINTENDENT OF FIRE ALARM SYSTEM
appointment, duties and salary of.....600-601

SUPERINTENDENT OF PUBLIC SCHOOLS
one of the managers of the Wilmington Institute.....525

SUPERINTENDENT OF WATER WORKS AND GAS COMPANY

certain duties of, as to excavations.....944

SUPERVISORS OF STREET AND SEWER DEPARTMENT

districts of 1034
to investigate accidents and make daily reports.....1034

SURETIES (See Indemnifying Bonds, and Official Bonds)

of assessors and collectors, liability and powers of.....83, 94, 102
members of Council, disqualified for.....607, 980

SURETY COMPANIES

may execute bonds, &c., when 532
certificate of Insurance Commissioner, what to show as to surety companies 533

SUPERIOR COURT FOR NEW CASTLE COUNTY

to appoint commissioners to condemn land for street railway companies 496, 501, 506

SURVEYING

cost of, in extending City limits, how paid..... 22

SURVEYING DEPARTMENT

(See Engineering and Surveying Department)

SURVEYORS AND REGULATORS

(See Assistant Engineers and Surveyors)

appeals from, to Council 133
appointment and term of 133
gutters to be laid out by.....127
centre stones to be fixed by 111
duties of, as to contracts for grading, &c.....622
erection of fences 135
party walls 133
official bond of 618
vacancies in office of 607

SWALLOWS

are "dumb animals" 972

SWINE (See Animals, Hog Pens)

at large, prohibited 56, 745, 764
impounding of 747, 765
notice to owner of 747, 765
regulations for construction of pens, for.....765-766
sale of 747, 765

T

TABLE OF CASES.....xvii, xviii, xix, xx, xxi, xxii, xxiii, xxiv

TABLE OF CONTENTS.....vii, viii, ix, x, xi, xii, xiii

TAR

duty of Judge of Municipal Court to prevent manufacture and boiling of 967
heating of, when lawful 966-967
manufacturing and boiling of, prohibited 966-967
duty of Street Commissioner and constables as to.....967

TATNALL STREET

width of 934
part of, vacated 1065

TAVERNS (See Tippling Houses)

TAXATION (See Exemption from Taxation, Taxes)

TAXES

abatement of 94
advertisement of list of persons and real estate in cases of unpaid 99
assessment and collection of 80-104
bills and receipts for 93
City bonds, exempt from 104
certificates of 99
Clerk of Council's duty, as to 567
Council cannot release or exempt persons from.....103
distraint of goods and chattels for..... 97
deed of purchaser who buys land, for 98
electric light companies to pay certain.....84-86
exemptions from (See Exemptions)
exemptions from 83, 84, 103, 170, 487-492, 523, 526
gas companies to pay certain.....84-86

TAXES—(Continued)

heat, light and power companies to pay 86
horses, subject to 103, 929
how levied and collected on 929-930
how long collectible 83, 95, 96
liability for, when owner of property changed and no notice given 107
lien of 95-98
extension of 96
limitation of 95
transferred to fund in case of sale under execution process 96
minors' property liable for 97
non-residents' property liable for 97
owners, unknown, taxes collected from property of..... 98
public service corporations, to pay certain.....84-86
park lands, exempt from 170
payments of collectors of 101
permit to erect or repair houses may be withheld until, paid....156
poll, rate of 90, 91
property liable for 97, 98
rate within extended limits 21-27
rates, how fixed 90-91, 92
redemption of land sold for, time of, &c. 99
sales for collection of 98
street railway companies to pay certain.....84-86
telegraph companies to pay certain 84-86
telephone companies to pay certain 84-86
title of purchaser who buys lands sold for..... 98
water companies to pay certain..... 86

TAYLOR MORTGAGE

bond for payment of 470-471, 684

TELEGRAPH POLES (See Poles)

telegraph companies to pay tax on miles of street used for wires and poles 85

TELEGRAPH WIRES (See Wires)

TELEPHONE POLES (See Poles)

telephone companies to pay tax on miles of streets used for wires and poles 85

TENTH STREET (See Chestnut Street (Old))

part of, vacated 264, 946
part of, removed from plan or map of City 1062
no railway or railroad company to lay track upon part of 509
ordinance for issuance of bonds for 716

TENANTS

complaints from, as to water in cellar 773
digging of privy wells in cellars by, unlawful 786
duties of, as to removal of weeds 786
removal of snow 1019
privy vaults 789
goods of, liable for taxes of landlord 97
penalty for refusal of, to obey Board of Health 143
privy vaults may not be dug by, when 127
remedy of, against landlord 97
removal of, from unclean premises 784

THEATRES (See Shows)

license fee for 522, 959
"THE MAYOR AND COUNCIL OF WILMINGTON" is corporate name or title of City 28

THIRD STREET

extension of 941
leasing of wharf at end of 920
part of vacated 1060
width of 934

THIRTY-THIRD STREET

part of, vacated 1064

THIRTY-FOURTH STREET

part of, vacated 1065, 1069

THIRTY-FIFTH STREET

part of, vacated 1065

THIRTY-SIXTH STREET

name of, changed to Barrett street 1058
part of, vacated 1065

THORN STREET

width of 934

TIE VOTE (See Votes)

at elections for assessor and collector....82, 412, 413
at elections for City offices, generally 412-413

TIPPLING HOUSES

definition of 750
penalty for keeping 749

TITLE

corporate name or title of City 28
examinations of, by City Solicitor 573
to old Academy, Ninth ward, vested in City....523
to certain school houses, vested in City....438
sales of lands for collection of taxes.... 98
liens for repairing sidewalks 122, 124
paving and curbing liens 120
sewer liens 242
street liens 116
cost of abatement of harbor nuisances 190, 191

TORPEDOES (See Bombs)

TOWNSEND STREET

part of, vacated 265, 271

TREASURER

bond of 62, 575
Building Inspector to pay over fees to....837
cash book to be kept by....576
City officer 30
Clerk of Market to pay over fees to, when....828-829
clerk's salary 61
clerk may be appointed by 61
clerk may be discharged by.... 61
deposit of moneys by 63, 575
duties of 64
duties of, as to certain bonds 460, 475
election of 61
engineers of City Surveying Department to pay moneys to....621
illegal payments by, penalty for.... 63
money orders to be countersigned by 63, 575
office and office hours of....576
pay roll, duties of, as to....616
salary of 68, 608
sinking fund commissioners to receive payments from....928

TREASURER—(Continued)

Solicitor to be notified by, of unpaid balance due from assessors and collectors 101
statements to Council, by 63, 576
statements to be made and delivered to Clerk of Council, by....988
penalty for failure so to do....988
term of office, of.... 61
vacancy in office of, how filled.... 35
warrants for fees of witnesses in Municipal Court, paid by..... 50
warrants of Board of Public Education to be countersigned by..434
warrants of Street and Sewer Department to be countedsigned by 236
warrants of Water Department to be countersigned by....183

TREASURER'S CLERK

appointment and term of.... 61
removal of 61
salary of 61, 576, 608
salary of, may be increased by Council 61

TREES

hitching horses to, unlawful 969
penalty for hitching horses to 969
impounding horses, unlawfully hitched to....969
penalty for obstructing public lamps by....968
in public parks, penalties for injury to....1095
penalty for injuries to 968-969, 1007
signs, advertisements and show bills on, unlawful....994
penalty for signs, as aforesaid 994
certain kind of, unlawful to plant....995
where may be planted 995
to be kept trimmed and removed, when....995

TURNPIKE

when and how taken for public street....118

TWELFTH STREET (See Dickinson Street)

Act, respecting part of 266
right to open part of, prohibited....266

TWELFTH WARD

limits of, extended 28

TWENTIETH STREET

width and course of, changed 258

TWENTY-FIRST STREET
width and course of, changed 259

TWENTY-SECOND STREET
width and course of, changed 260

TWENTY-THIRD STREET
width and course of, changed.....260-261

TWENTY-FOURTH STREET
part of, vacated 262

THREE-FOURTHS VOTE (See Votes)

TWO-THIRDS VOTE (See Votes)

U

UNANIMOUS VOTE (See Votes)

UNCOVERED OPENINGS
in sidewalks, unlawful 1016

UNDERGROUND WIRES
conduits for 86
powers of Council, respecting 130

UNDERTAKERS (See Burials)
burial of dead bodies, duties of, as to.....109
penalty for burial or removal of dead bodies without permit 110, 796
permits for burials, to be obtained by.....109, 795

UNION FIRE COMPANY
location of 629, 647
made a member of the Fire Department.....647

UNUSED STREET RAILWAY GRANTS
on streets of City, recalled and annulled.....1031

UNLIMITED CONSENTS OF STREET RAILWAY COMPANIES, REVOKED 1031

UNITED STATES

City officers required to take oath to support the Constitution of the 31
cession of land to 486
public buildings of, exempt from taxation.....83, 485, 486

UNPAVED SPACES ON SIDEWALKS

unlawful to injure grass, plants or trees on.....995-996, 1007

V

VACANCIES (See Titles of Different Offices)

in elective offices of City, how filled, generally..... 35
in offices filled by appointment of Council.....607
in candidates for office, how filled.....371-372, 406
in challengers at election 285
in election officers, what constitutes 286
in poll clerks 286
in offices as the result of tie vote (See Tie Vote)

VACANT LOTS

of City, abatement of nuisances on 143
of removal of weeds from 786
Street and Sewer Department may compel paving in front of....123
no waste or refuse matter to be placed on.....804

VACATION

of certain streets 264-266, 1064-1070
of roads, notice of, required 110
of streets for overhead bridge.....512

VACCINATION (See Vaccine Physicians)

division of City into districts for purposes of.....790-791
gratuitous, regulations of 791

VACCINE PHYSICIANS (See Vaccination)

appointment and duties of 791
office signs of 791
salary and reports of 791
vacancies in office of, how filled 792

VANDEVER AVENUE (See Marsh Road)

establishment of 262

VAULTS (See Cesspools, Graves)

VEAL (See Inspector of Meat, Meats)

sale of, below certain age, prohibited.....805

VEHICLES (See Carriages, Wagons)

duty of drivers of all, as to fires.....635
regulations of speed of, on railroad.....754

VENDUES. (See Auctions)

on sidewalks, regulations of.....743

VESSELS (See Quarantine)

aground, exception as to penalty.....917
ballast from, must not be discharged in streams.....916
damaged, view of Port Wardens of.....196
dead bodies aboard vessels, regulations of.....785
harbor master, duties of, respecting.....917-918
infected with disease, removal of.....780
regulations for mooring of.....196, 915, 916
regulations of speed of.....918
regulations of, at wharves, &c.....916

VETO POWER OF MAYOR

as to ordinances passed by Council..... 57
as to borrowing money in excess of the funded debt.....77, 78
ordinances to which, not applicable..... 78

VISITING COMMITTEES (See Board of Public Education)

VOTERS (See Elections)

registration of (See Registration of Voters)

VOTES (See Elections, Tie Vote and Titles of Different Offices)

for assessors and collectors..... 82
for borrowing money in case of calamity to City Hall or Water Works..... 80
for City Treasurer..... 61
for extraordinary appropriation ordinances..... 76
for Mayor..... 32
for members of Council.....53, 405
for officers of Council..... 54
for ordinances.....54, 57, 75
for President of Council..... 52

VOTES (See Elections, Tie Vote and Titles of Different Offices)—(Continued)
tie votes, and power of Council to elect in such case.....82, 412-413
when aye and no vote required.....54, 57, 65, 76, 77, 614
majority vote sufficient 35, 54, 65, 75, 77, 81, 112, 194, 210
plurality vote sufficient to elect.....32, 52, 61
three-fourths vote required 78, 80
two-thirds vote required.....35, 57, 75, 76, 77, 78, 131, 171, 173, 176, 227, 434, 463, 629
unanimous vote required 180, 235

W

WAGONS
coal, coke, &c., to be placed so as not to obstruct street railway cars 1028
duty of drivers of, and other vehicles as to fires.....635
fee for weighing of 587
on grass plots, prohibited 995-996
limit of time allowed on narrow streets, with track on same....1029
loading and unloading on streets with track on, how to be done 1028
sales of hay, &c., from, prohibited in streets.....1012
on sidewalks, prohibited 742, 744
street cars, not unnecessarily to be blocked by.....1027
in curb stone markets (See Curb Stone Markets)

WALLS (See Building Regulations, Party Walls)
powers of Council, respecting 56

WALNUT STREET
wharf, leasing of 523, 920
width of 934
vacation of parts of.....265-268, 949

WARDS
boundaries of 21, 22, 26, 68, 72-74

WARNER STREET
a part of, removed from City plan or map.....1068

WARRANTS (See Municipal Court)
of Street and Sewer Department 236
for tax lists 92

WARRANTS (See Municipal Court)—(Continued)

of Water Department 183
for witness fees in Municipal Court, to be made payable to the person entitled to 50

WASHINGTON FIRE COMPANY

location of 629

WASHINGTON STREET (Old) (See Fourteenth Street)

extension of 941
name of, changed to Fourteenth street 941

WASHINGTON STREET (See Pasture Street)

parts of, vacated 264, 946

WASH PAVES

use of, at certain hours, the result of permission granted.....1085

WASTE PAPER RECEPTACLES

penalty of persons defacing same.....997

WASTE PIPE OF REFRIGERATORS

not to be connected directly with soil pipe or sewer.....1044

WATER (See Water Department, Water Pipes, Water Service)

cellars with, in, prohibited 773, 774
drainage of, on premises of another, prohibited.....774
horse troughs, &c., regulations of, use of, in.....1084
meters for, when to be used 1083, 1085, 1086
detector, when to be used 1083
powers and duties of Water Department as to supply of....174, 183
private pipe for supply of 1083
regulations concerning supply and use of.....1075-1088
rents for supply of, by whom collected.....1081, 1085
sprinkling of streets with 1026, 1085
stagnant pools of, prohibited 771, 774
unlawful use of, penalty for.....1079, 1080, 1082, 1085
wasting of, penalty for 1079, 1080

WATER CLOSETS

(See Building Regulations, Plumbing Rules and Regulations, Sewers)

WATER COMPANIES

to pay certain taxes 86

WATER DEPARTMENT

appointment of Commissions of....175
appropriation to 59
application to, for permits for water, &c....1083, 1086
Auditor to examine bills of....180, 1079
bonds of persons bidding for work of....179
bonds may be issued by, when 181
books and accounts of 178
Chief Engineer to report to 1076
Chief Engineer, term, salary and bond of....1075
duties of 1075-1076, 1079, 1080, 1087
collection of water rents by 1081, 1085
composition of 175
contracts of 179
contract with, for water, nature of....1082
contracts, rescission of 1082
creation of 174
enginemen of, duties of 1077
foreman of, duties of 1077
land may be acquired by 179, 522
land may be condemned by, for enlargement of water supply....522
malfeasance of members or officers of....181
oath of members of 176
officers and servants may be appointed and discharged by....178
ordinances may be changed and rules made by....177-178
organization of 176
patrol officers (two) may be appointed by....183-184
pay rolls of, Chief Engineer to make weekly....1079
powers and duties of 174, 177, 178, 183
permits, how obtained from, for water....1083, 1086
plans, &c., made to, by Chief Engineer....1076
plumber to notify, when ready for inspection of pipe....1083-1084
public bath house may be constructed by....183
qualifications of members of 176
Registrar to report to 1078
appointment and removal of....178, 1077
duties and office hours of....1078-1079
term, salary and bond of 1077
regulations as to permits issued by....1079
removal of members of 176
rents, income, &c., of, paid monthly by, to Registrar....183
reports made to, by Chief Engineer....1076
revenue of 177
rules and regulations of 1075-1091
salaries of members of 177
secretary of 177
tariff of water rates by 1088-1091

WATER DEPARTMENT—(Continued)

terms of members of 175
vacancies in, how filled 176
vacant houses, to be notified of.....1086
wash paves, permission may be granted by, to use.....1085
water pipes may be laid by 177
water rates to be fixed by 183
water rights may be purchased by 182
water supply and water works, under control of.....177

WATER FRONTS

disputes respecting, how settled.....195, 203

WATER METERS

attachment of 1083, 1085, 1086
not registering 1088
not to be disconnected except.....1087
where kept 1087

WATER PIPES (See Excavations)

duties of Chief Engineer of water works, respecting.....1075-1076
foreman of water works, respecting.....1077
entry for inspection of.....1080
excavations in streets for 1083
fire hydrants, duty as to 1080-1081, 1083, 1084
obstruction of 1084
meters on 1085
penalty for introducing fixtures without a permit.....1079
permits for connections for 1083
private, regulations of.....1082
private, rescision of contracts for.....1082
regulations of stop cocks for 1080, 1081
as to ferrules 1080
separate for each house.....1080
tax for .....
waste by and repairs to 1079, 1080

WATER RATES

amount of, how fixed 183
collection of 177, 1081
exemption from, when 1086
payable, when 1081, 1085, 1088
penalties for non-payment of 1082, 1088
tariff of 1088-1091

WATER RENTS (See Water Rates)

WATER RIGHTS

bonds for purchase of 463
purchase of 174, 181

WATER SUPPLY

bonds for (See Bonds)
condemnation of land for enlargement of 522

WATER STREET

sidewalks of, widened 937
parts of, vacated 264, 265, 1065
width of 128, 933

WATER TAX (See Water Rates)

WATER WITCH FIRE COMPANY

location of 629, 642
reinstatement of 642
reincorporation and powers of 538

WATER WORKS (See Water Supply)

control and care of 177, 1075
extraordinary appropriation in case of injury to 80
penalties for injuries to 1081, 1084

WEBB STREET

sewer in 247

WECCACOE FIRE COMPANY

location of 629

WEEDS

removal of, from vacant lots 786
sidewalk covered with, a nuisance 1007

WEIGHING (See Weigh Master)

duties of Weigh Master, respecting 586
fees for 587
penalty for unloading hay without weighing 588

WEIGH MASTERS

appointment of, by Council 586
may appoint deputies 586
oath, duties and fees of 586-587

WEIGHTS AND MEASURES

condemnation of 815
Council's powers respecting 56-57, 814
dry and liquid, regulations of 816
false, sales by, prohibited 815
fees, respecting 816, 817
regulations of, in sales of ice 953
corn meal 953
regulator of, Clerk of Market to be 816
regulator of **(See Clerk of Market)**
sealer of **(See Clerk of Market)**
sealing and stamping of 815
standard of, is that adopted by the State 814

WELLS **(See Cesspools)**

powers of Council to supervise (obsolete) 133

WEST DOCK STREET **(See Dock Street)**

part of, vacated 267

WEST FOURTEENTH STREET

part of, vacated 1063

WEST STREET

extension of, prohibited 263
leasing wharf at end of 920
part of, vacated 263, 1065
width of 934

WEST LIBERTY STREET

part of, vacated 1069

WHARF COMMISSIONERS

salary of 609

WHARVES **(See Harbor Commissioners and Port Wardens)**

erection of, without license 190
fronts of 195, 916
leases of 128, 919-920, 1033

WHARVES (See Harbor Commissioners and Port Wardens)—(Continued)

licenses to erect or extend 194
littoral proprietors on Delaware River, may own....202
lines of, Harbor Commissioners to fix....185
lines of (new) 198
lines of (present) 193
market shed at Front and Church streets....831-832
public nuisances, when 190
regulations of vessels at 196
regulation of construction of 188
regulations for leasing of 919-920
at foot of Church street, resolution respecting....1033
French street 920
Poplar street 920
Shipley street 920
Third and Fourth streets 920
Walnut street 920
West street 920
offensive matter, deposited on, prohibited 776
removal of oyster shells from....776
separate from main land not allowed 189
unlawful, Chancellor may enjoin erection of....191
Port Wardens may remove....191
at Walnut street, leasing 523

WHEELBARROWS

on sidewalks, regulations, respecting 757, 763

WILLING STREET

vacation of 264

WILLOW LANE

name of, changed to Franklin street....1059

WILMINGTON (See Council and Respective Titles of Officers and Departments)

bonds of, exempt from taxation 484
corporate name or title of 28
fiscal year of 74
Street and Sewer Department 1071

WILMINGTON AND CHRISTIANA TURNPIKE (See Maryland Avenue)

vacation of 265

WILMINGTON AVENUE

part of, vacated 264

WILMINGTON CITY RAILWAY COMPANY

acts relating to 493-498
authorized to construct a railway 493
commencement of 493
charter perpetual 497-498
condemnation proceedings by 496-497
general powers of 494-497, 498
fare of, for one continuous ride not to exceed five cents.....498
to pave and keep in repair, between tracks and three feet on each side 498
penalty for one obstructing or damaging property of.....497
steam power, not to be used by, without consent of Council (now Street and Sewer Department) 494
track or wires not to be laid without consent of duly authorized authorities of City or county.....498
tracks, where to be laid 493
not to be laid 256, 508, 509

WILMINGTON COAL GAS COMPANY

acts relating to 519-520

WILMINGTON INSTITUTE

(See Free Library, Young Men's Association for Mutual Improvement)

appropriation to, for department of the blind.....985
from Board of Public Education.....437
Council may enter into contracts with.....527, 985
exemption of, from taxation 526
Mayor requested to make contracts with.....984

WILMINGTON MALLEABLE IRON COMPANY

act authorizing use of Buttonwood street by.....269

WILMINGTON TURNPIKE

part of, made public 256

WINDOWS

bulk, &c., projecting over sidewalk, regulation of.....760, 859, 1013
oriel and bay, regulation of projection of.....859, 1013

WIRES

of fire alarm system, penalty for damaging 633

WIRES—(Continued)

in public parks, consent of Park Commissioners respecting.....170
regulation of heights of 954
in streets, consent of City respecting (obsolete).....254
underground, powers of Council respecting (obsolete).....130
conduits for 86

WITNESSES

attendance of, may be compelled by
City Solicitor 66
Council 60-61
Mayor 33
Municipal Court 39
registration officers 317
fees of, in Municipal Court 47, 50, 51
unclaimed fees of 48

WOMEN

may vote at school elections 426

WOOD (See Corders and Measurers of Wood and Bark)

Council may regulate cording of..... 56
regulations for cording and measuring of.....584-586
on sidewalks, when prohibited 743

WOODEN BUILDINGS .See Frame Buildings)

WOOD STREET (See Ninth Street)

extension of 941
name of, changed to Ninth street 941-942
to Rodney street 1059
width of 933, 934
width of sidewalks of 937

WOODDALE AVENUE

part of, vacated 262
width and course of, changed 261
name of, changed to Van Buren street 1059

WOODLAWN AVENUE

removing parts of, from plan or map of City.....1062

WRECKS

removal of by port wardens 191

Y

YARDS
offensive or noisome, prohibited 774, 788

YELLOW FEVER (See Contagious Diseases)

YOUNG MEN'S ASSOCIATION FOR MUTUAL IMPROVEMENT
(See Free Library, Wilmington Institute).....527, 529, 530, 531

YOUNG WOMEN'S CHRISTIAN ASSOCIATION
property of, exempt from taxation 491

Z

ZOOLOGICAL EXHIBITIONS
license fee for 959

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